Appendix A

- **White Paper 1**
- **White Paper 2**

July 10, 1995

MEMORANDUM

SUBJECT: White Paper for Streamlined Development of Part 70 Permit Applications

FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Please find attached a White Paper on Part 70 permit applications. The paper is designed to streamline and simplify the development of part 70 permit applications. The guidance was developed to respond to the concerns of industry and permitting authorities that preparation of initial permit applications was proving more costly and burdensome than necessary to achieve the goals of the Title V permit program.

The White Paper provides several streamlining improvements. Among them, it allows industry to:

- Provide emissions descriptions, and not emissions estimates, for emissions not regulated at the source, unless such estimates are needed for other purposes such as calculating permit fees;

- Submit checklists, rather than emission descriptions, for insignificant activities based on size/production rate and for risk management plans potentially owed

under section 112(r);

- Provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review (NSR) permits;

- Exclude certain trivial and short-term activities from permit applications;

- Provide group treatment for activities subject to certain generally-applicable requirements;

- Certify compliance status without requiring re-consideration of previous applicability decisions;

- Use the Part 70 permit process to identify environmentally significant terms of NSR permits, which should be incorporated into the part 70 permit as federally-enforceable terms; and

- Submit tons per year estimates only where meaningful to do so and not, for example, for section 112(r)-only pollutants; such estimates should be based on generally-available information rather than new studies or testing.

There is an immediate need for the implementation of this guidance. Increasing numbers of sources are becoming subject to the requirement to file a complete part 70 application as more State part 70 programs are approved. I strongly encourage you to work with your States to effect near-term use of the White Paper guidance to streamline the application process.

I want to thank you and your staff for your support in developing this guidance and invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345 or Jeff Herring at (919) 541-3195.

Attachment

cc: M. Trutna (MD-12)
J. Herring (MD-12)
A. Eckert (2344)
J. Domike (2242A)
A. Schwartz (2344)

WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

July 10, 1995

Contacts: Michael Trutna (919) 541-5345
Jeff Herring (919) 541-3195

EPA WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

July 10, 1995

I. INTRODUCTION

The EPA is issuing this guidance to enable States to take immediate steps to reduce the costs of preparing and reviewing initial part 70 permit applications. A perceived lack of clarity in these requirements has led to an unintended escalation in permit application costs. Too often, sources have felt compelled to make conservative assumptions to assure themselves of receiving the "application shield" and avoiding enforcement actions.

Title V of the Clean Air Act (the Act) and its implementing regulations in part 70 set forth minimum requirements for State operating permit programs. In general, this program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements. Accordingly, operating permits and their accompanying applications should be vehicles for defining existing compliance obligations rather than for imposing new requirements or accomplishing other objectives.

There is an immediate need for this guidance. Most States and those local air pollution control agencies participating in the program (hereinafter referred to as "States") are expected to receive approval by the fall of 1995 of their part 70 operating permit programs to implement title V of the Act. As a result, most sources are in the process of preparing their initial applications, a number of sources have already submitted their initial applications, and a few part 70 permits have already been issued. As programs start to be implemented, concerns are being raised by States and sources as to the expectations for complete permit applications and permit content, the intended scope of the program, and the respective responsibilities of sources, permitting authorities, and the Environmental Protection Agency (EPA) in making implementation decisions in accomplishing permit issuance.

The EPA recognizes that the burden for filing a complete application may vary significantly among States as does the nature of their applicable requirements, status of source

compliance, air quality conditions, the type of permit fee schedule, and the size and complexity of their industry. However, EPA believes that the mentioned problems, if unaddressed, would threaten implementation of the title V program, and thus warrant a timely response. The clarifications contained in this policy statement are made under the current part 70 regulations and should typically not require State rulemaking. The EPA strongly urges States to allow sources to take near term advantage of the flexibility provided by this paper, particularly during the initial implementation phase of the program. It is imperative that the provisions and clarifications of this paper are implemented by States as quickly as possible. Most States need not wait for EPA approval before implementing this guidance, however they are encouraged to consult with the appropriate EPA Regional Office as they adjust implementation of their programs.

Section II of this paper articulates how part 70 allows permitting authorities considerable flexibility to make decisions regarding the completeness of applications and their adequacy to support initial permit issuance. This guidance makes clear that the part 70 rules do not impose unreasonable permit application preparation burdens. In particular, it accomplishes application streamlining by enabling and encouraging the use of:

- Tons per year (tpy) estimates for emissions units and pollutant combinations subject to applicable requirements, and only where meaningful to do so (e.g., not for section 112(r)-only pollutants); such estimates can be based on generally-available information rather than new studies or testing;

- Emissions descriptions, not estimates, for emissions not regulated at the source (unless needed for permit fee calculation, for purposes of establishing a permit shield or a plantwide applicability limit (PAL), or for resolution of applicable requirement coverage or major source status);

- Checklists rather than emission descriptions for insignificant activities based on size/production rate and risk management plans potentially owed under section 112(r);

- Exclusions for certain trivial and short-term activities from permit applications (see Attachment A);

- Group treatment for activities subject to certain generally-applicable requirements;

- Part 70 permit process to reconcile which terms of existing new source review (NSR) permits should be incorporated into the part 70 permit as federally-enforceable terms;

- Citations for applicable requirements with qualitative descriptions for each emissions unit, and for prior NSR permits as they may be revised; and

- Certifications of compliance status which do not require re-evaluation of previous applicability decisions.

This paper affirms EPA's strong commitment to successful program implementation. It is the first in a series of policy statements intended to alleviate known implementation concerns within the framework of the existing part 70 regulations. At the same time, the Agency is developing rulemaking which will afford a new streamlined approach to part 70 permit revisions and provide other relief not possible under the current rule. The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

II. STREAMLINED DEVELOPMENT OF COMPLETE Part 70 APPLICATIONS

A. Current Requirements for Complete Applications (§ 70.5)

Within 12 months of the effective date of a part 70 program, all sources subject to the program must submit complete permit applications. The State may establish, and many have established, a phased schedule for application submittals.

Section 70.5(c)(3) requires a permit application to describe all emissions of pollutants for which a source is major and all emissions of regulated air pollutants. It also authorizes the permitting authority to obtain additional information as needed to verify which requirements are applicable to the source. Applications are also sometimes relied upon to evaluate the fee amount required under the approved permit fee schedule. Emissions information for these purposes does not always need to be detailed or precise. Information for applicability purposes need only be detailed enough to resolve any open questions about which requirements apply. Information for fee purposes only has to be consistent with what is required in applications by the permitting authority to implement its fee schedule. No information is needed when this activity is done outside the part 70 permit application process. Finally, in cases where the applicable requirement will be established or defined in the

part 70 permit (e.g., PAL), the part 70 permit application must contain additional information as needed to verify emissions levels and the basis for measuring changes from them.

Section 70.5(c) further requires the application to contain a compliance plan describing the compliance status of the source with respect to all applicable requirements. For sources that will not be in compliance at the time of permit issuance, the application must contain a narrative description of how the source will achieve compliance and a detailed schedule of remedial measures leading to compliance. If the source is in compliance, the application need only contain a statement that the source will continue to comply. For applicable requirements that will take effect during the permit term, the compliance plan may be a statement that the source will meet them. Each application must also include a certification of the source's compliance status with respect to each applicable requirement and a statement of the methods used for determining compliance. Finally, the responsible official must also certify that the application form and the compliance certification are true, accurate, and complete based on information and belief formed after reasonable inquiry.

Each part 70 program must contain criteria and streamlined procedures for determining when permit applications are complete. Applications for an initial part 70 permit may be considered complete if they have information sufficient to allow the permitting authority to begin processing the application. Unless the permitting authority determines that an application is not complete within 60 days, it will be considered complete by default. If the source submits a timely and complete application the source is shielded against penalties for operating without a permit until its part 70 permit is issued (i.e., the source is granted the "application shield").

Even after applications have been initially determined to be complete, the source must submit any additional information requested by the permitting authority to determine, or evaluate compliance with applicable requirements, within the reasonable timeframe allowed by the permitting authority, to maintain the effect of the application shield. In addition, until release of the draft permit, sources have an on-going responsibility to correct information or submit supplemental information needed to prepare the permit. The timeframe for updates will depend on the permitting authority's schedule for performing the technical review for a given application. The application shield once granted remains in effect until permit issuance even where the source augments its original application submittal in response to requests for more information by the permitting authority.

As mentioned, considerable confusion exists as to what constitutes a complete application under the requirements of part 70. Due to the significant new penalties for knowing violations and the extremely visible forum for processing permit applications, in the absence of clear guidance many sources have made or are making very conservative assumptions regarding their obligations. For example, many in the regulated community feel that a part 70 application can be complete only if it exhaustively catalogues every past and present emitting activity with great precision. Others fear that an application can never be complete since many Act requirements are still evolving, confusion exists as to which requirements are applicable to the source (e.g., what constitutes the State Implementation Plan (SIP)), or no monitoring data exists upon which to base the initial certification of compliance. Other concerns have been raised regarding the choice of emissions estimation techniques and the amount of information needed to support decisions of applicability or exemption, especially those involving the appropriate NSR for previous construction activities.

There is also a general apprehension that EPA will second guess any or all of these judgments during its review period and thereby impede the permit issuance process. Others are concerned that even if complete applications could be filed, they soon would grow obsolete and require updates before a draft permit could be prepared. In addition, there are concerns that EPA will issue guidance in the future which would establish extensive new requirements concerning the content of a complete application. As a result, worst-case assumptions for various determinations are being made effecting a level of rigidity and rigor as well as cost unintended by the current regulations.

This guidance is intended to correct these misunderstandings. It is intended to give States and sources direction on how States can reduce these burdens while achieving the requirements of title V. As previously stated, EPA believes that these streamlining ideas can and should be implemented under the current part 70 rule for most States. To the extent State forms reflect the current confusion, the Agency wishes to clarify the issues sufficiently for States to revise the portion of their forms implementing title V to be consistent with this guidance.

B. Content of Part 70 Permit Applications

1. Overview

This section describes the level of information which must be contained in a part 70 permit application for it to be considered complete. This guidance clarifies the minimum

requirements under the Federal regulations for acceptable part 70 permit applications. It grants a substantial degree of discretion to State permitting agencies. The EPA recognizes that different States may adopt different approaches to these minimum requirements depending on their local needs and circumstances, and that others may elect to go beyond those minimum requirements. However, at least in the initial program phase, EPA urges States to keep part 70 application requirements to the minimum needed to identify applicable requirements. In many instances, a qualitative description of emissions, or sometimes no description at all, will satisfy this standard.

This section specifically clarifies that there are different expectations for information from emissions units depending on whether and how applicable requirements apply. In addition, this section provides several policy clarifications aimed at lowering current application burdens associated with addressing insignificant activities, generic grouping of emissions units and activities, short-term activities, incorporation of current NSR permit conditions, section 112(r) requirements, and Research and Development (R&D) activities.

2. Required Emissions Information And Source Descriptions

Applications should contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit. This would require at least a qualitative description of all significant[1] emissions units, including those not regulated by applicable requirements.

While part 70 does not require detailed emissions inventory building, it does require limited emissions-related information for each pollutant and emissions unit combination which is regulated at the source. Section 70.5(c)(3)(iii) requires for such units emissions rate descriptions in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. The EPA interprets the tpy estimates to not be required at all where they would

[1]The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for treatment in the application as an insignificant emissions unit.

serve no useful purpose, where a quantifiable emissions rate is not applicable (e.g., section 112(r) requirements or a work practice standard), or where emissions units are subject to a generic requirement (see Section 4. Generic Grouping of Emissions Units and Activities).

On the other hand, more emissions information would presumptively be required to verify emissions levels and monitoring approaches where PALs or other plantwide emissions limits would be established or defined in part 70 permits. Another situation where additional emissions information might be needed is where the permitting authority would be granting the shield relative to a decision of non-applicability where a source is claiming an exemption based on an emissions level cutoff in a standard that has been issued for the category to which the emissions unit potentially belongs. In such cases additional information to support a determination that a requirement is not applicable may well be required. In addition, for the minority of States that use the part 70 application to determine the first year's permit fee, the application and its description of all regulated air pollutants for presumptive fee calculation must also be adequate for that purpose. Finally, additional emissions information might also be necessary in some cases to resolve a dispute over whether a particular requirement is applicable, or whether a source is major for a particular pollutant (additional information would not be necessary where a source would stipulate to the applicablity of the requirement and/or its major status).

Wherever emissions estimates are needed (unless the source independently decides to more accurately estimate emissions), use of available information should suffice. Any information that is sufficient to support a reasonable belief as to compliance or the applicability or non-applicability of requirements will be acceptable for these purposes. That could include AP-42 emission factors, emissions factors in other EPA documents, or reasonable engineering projections, as well as test data (see Section C. Quality of Required Information).

Any required tpy estimates are not to be included as federally-enforceable part 70 permit terms, unless otherwise required by an applicable requirement or requested by the source to avoid one. In addition, where tpy descriptions are needed, EPA does not believe that part 70 requires multiple forms of emissions estimates (i.e., actual allowable, and potential emissions). Also, where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory), then the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Even if tpy estimates are not necessary, part 70 applications must describe all significant emissions units, including any which are not subject to any applicable requirement at any given emissions unit. Such unregulated emissions can include hazardous air pollutants (HAP) listed under section 112(b) of the Act and criteria pollutants that are unregulated for a particular emissions unit. A general description of emissions (i.e., simple identification of the significant pollutant or family of pollutants believed to be emitted by the emissions unit) should suffice. For part 70 purposes, the descriptions of emissions units themselves also can be quite general (i.e., descriptions need not contain information such as UTM coordinates or model and serial numbers for equipment, unless such information is needed to determine the applicability of, or to implement, an applicable requirement). Negative declarations are not required for pollutants that are not emitted by the emissions unit.

Some examples may help to illustrate where only source descriptions of regulated and unregulated emissions are necessary for title V purposes:

- An application for a de-greaser subject to a requirement to have a certain type of lid could describe the relevant applicable requirement and simply identify that it emits volatile organic compounds (VOC) and falls within the scope of the regulation. Quantification of the VOC emissions would not be necessary since the level of emissions is not relevant to the standard.

- An application for a storage tank subject to a requirement to have a certain type of seal, in addition to describing this requirement, would only need to generally identify the types of pollutants emitted, such as VOC and HAP generally.

- An application for a boiler that is grandfathered under the SIP could just identify that PM, SO2, NOx, VOC, lead, and HAP are emitted and that no applicable requirement is relevant.

3. Insignificant Activities

Section 70.5(c) allows the Administrator to approve as part of a State program a list of insignificant activities which need not be included in permit applications. For activities on the list, applicants may exclude from part 70 permit applications information that is not needed to determine (1) which applicable

requirements apply, (2) whether the source is in compliance with applicable requirements, or (3) whether the source is major. If insignificant activities are excluded because they fall below a certain size or production rate, the application must describe any such activities at the source which are included on the list. Even for such insignificant activities, the process for listing them in the application can be fairly simple. The permitting authority could allow the source merely to list in the application the kinds of insignificant activities that are present at the source or check them off from a list of insignificant activities approved in the program.

In addition to the insignificant activity provisions of § 70.5(c), there is flexibility inherent in § 70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions) and can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to § 70.5(c). Attachment A lists examples of activities which EPA believes should normally qualify as trivial in this sense. This list is intended only as a starting point for States to consider. The determination of whether any particular item should be on the State's trivial list may depend on State-specific factors (e.g., whether the activity is subject to the requirements of the SIP). Permitting authorities can also allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A. Additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities.

4. Generic Grouping of Emissions Units and Activities

Questions have arisen regarding whether emissions units and activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements brought to EPA's attention include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to as "generic," because they apply and are enforced in the same manner for all subject units or activities.

These requirements can normally be adequately addressed in the permit application with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. Even where such generic requirements attach to individual small emissions units or activities, requiring a unit-by-unit or activity-by-activity description of numerous units or activities would generally impose a paperwork burden that would not be compensated by any gain in the practical enforceability of such relatively simple requirements. Therefore, provided the applicant documents the applicability of these requirements and describes the compliance status as required by § 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies which would mandate a different result. Similarly, the part 70 permit which must assure compliance with the generic applicable requirement would be written without specificity to applicable emissions units or activities.

In EPA's view, the validity of this approach stems from the nature of these applicable requirements. Accordingly, EPA believes application of this principle for grouping subject activities together generically should not depend on whether those activities qualify as trivial or insignificant. Where the applicable requirement is amenable to this approach, that is, where (1) the class of activities or emissions units subject to the requirement can be unambiguously defined in a generic manner and where (2) effective enforceability of that requirement does not require a specific listing of subject units or activities, permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant.

A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. Permitting authorities are in the best position to decide which SIP requirements can be treated in this generic fashion. However, permitting authorities may wish to consult with the EPA Regional office in advance to clarify any uncertainties.

5. Short-term Activities

States can treat many short-term activities (e.g., activities occurring infrequently and for a short duration at a part 70 source) subject to an applicable requirement in the same fashion as activities subject to a generic requirement (see previous discussion). Since these activities are not present at

the source during preparation of the permit, the most that can be expected is generic treatment in the application. For such activities, the application and permit would not include emissions unit specificity but instead would contain a general duty to meet all applicable requirements that would apply to any qualifying short-term activity. Short-term activities which are not subject to an applicable requirement should be classified as insignificant activities or would qualify as trivial, and so would not be included in either the part 70 application or permit.

For example, a contractor-run sandblasting operation that is subject to a SIP limit for particulate matter might be operated on an infrequent but recurring basis might qualify for the general duty approach. However, where such activities re-occur with considerable frequency, the permitting authority could require them to be included in the permit. The source would also be obligated to revise the permit if operation of any short-term activity would be in conflict with the permit. If short-term construction activities occur, the part 70 permit application would need to address them only if they are subject to the State's NSR program or are otherwise in conflict with the envisioned part 70 permit.

6. Determination of Applicable SIP Requirements

One of the undisputed challenges facing both State and the regulated community in their efforts to develop complete applications is the determination of the applicable SIP requirements for a part 70 source. In some situations, it may be difficult to identify all the requirements in the SIP which are applicable to a particular source. Applicants, after consultation with the permitting authority, should include in permit applications the State rules which, to the best of their knowledge, are in the SIP. A good faith estimate will be enough to support both a valid compliance certification and a "completeness" determination. Review by the permitting authority, EPA, and the public may provide additional insight into whether any other applicable requirements exist. Any additions should not affect the validity of the original permit application and its eligibility for the application shield or of the accompanying compliance certification. However, the source would have to update its certification to account for any subsequently identified SIP requirements.

At least one State has developed a checklist of its air rules and required the applicant to check off which ones apply and select appropriate codes for rationalizing which ones do not apply. This type of approach should aid the source in providing

in the part 70 application its understanding of what applicable requirements apply. Sources in such a State may rely on the checklist. The EPA has also provided a contractor to document the approved SIP for each State. Where an EPA compilation exists, sources may rely on it as well. This process is well underway for most States and permitting authorities and, in many cases, EPA Regional Offices can provide the rule citation of the State rules that have been approved as part of the SIP.

Where a State has adopted a rule that is pending approval by EPA into the SIP, sources (if advised by the permitting authority) could in their applications note that the corresponding State-only requirements will become federally enforceable upon SIP approval. The permitting authority during review of the application would be responsible for determining if the SIP had been approved. If so, then the permitting authority would incorporate the requirements into the federally-enforceable portion of the permit. If the requirements had not been approved into the SIP, the permitting authority could incorporate the pending requirements into the State-only enforceable portion of the permit and note that the requirements would become federally enforceable upon SIP approval. The federally-enforceable portion of the permit would include the existing SIP requirements and condition them to expire upon EPA approval of the SIP revision. Once the SIP revision is approved, the pending permit terms would become federally-enforceable and the permit terms based on the superseded SIP rule would become void.

7. Incorporation of Prior NSR Permit Terms and Conditions

This paper provides guidance to States and sources in devising a means to revise NSR permit terms as appropriate (including classification as a State-only enforceable term) in conjunction with the part 70 permit issuance process. As used here, "new source review" refers to all forms of preconstruction permitting under programs approved into the SIP, including minor and major NSR (e.g., prevention of significant deterioration). Section 70.2 defines any term or condition of a NSR permit issued under a Federal or SIP-approved NSR program as being an applicable requirement. The Agency has concluded, however, that only environmentally significant terms need to be included in part 70 permits. The EPA recognizes that NSR permits contain terms that are obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Such terms, as subsequently explained, need not be incorporated into the part 70 permit to fulfill the purposes of the NSR and title V programs required under the Act.

Minor NSR, in particular, is a program which the State has discretion to mold as necessary to be consistent with the goals of the SIP. Therefore, the permitting authority has very broad discretion in determining the terms of minor NSR. This discretion also exists to a much lesser extent in crafting major NSR permits, since the Act and EPA regulations contain several express requirements for review of major subject sources. Many NSR permit terms written in the past for both minor and major NSR, however, were understandably not written with a view toward careful segregation of terms implementing the Act from State-only requirements.

The EPA believes that the part 70 permit issuance process, involving as it does review by the permitting authority, public, and EPA, presents an excellent opportunity for the permitting authority to make appropriate revisions to a NSR permit[2] contemporaneously with the issuance of the part 70 permit. The public participation procedures for issuance of a part 70 permit satisfy any procedural requirements of Federal law associated with any NSR permit revision. This parallel processing approach is also an excellent opportunity to minimize the administrative burden associated with such an exercise. By conducting a simultaneous revision to the NSR permit, the permitting authority would be revising the "applicable NSR requirement" for purposes of determining what must be included in the part 70 permit.

There are several factors which bound the available discretion of the permitting authority in deciding whether an NSR permit term is necessary and must be incorporated into the part 70 permit as a federally-enforceable condition. Certainly all NSR terms must be incorporated which are mandatory under EPA's governing regulations (e.g., best available control technology, lowest achievable emissions rate, and other applicable NSR emission limits), or are not mandatory under EPA regulations but are expressly required under the terms of the State's NSR program (e.g., new source performance standards (NSPS) and SIP emission limits, reporting and recordkeeping requirements[3]), or are voluntarily taken by the source to avoid

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[2]In many States, an NSR permit is subsequently converted to an operating permit leaving the preconstruction permit void. In other States, there is not a separate construction permit (i.e., single permit system). In either case the phrase "NSR permit" means the current permit in which the NSR applicable requirements reside.

[3]This does not preclude the possibility that certain federally-enforceable limits incorporated into the NSR permit may

an otherwise applicable requirement (e.g., emission limits used to create a "synthetic minor" source, to "net out" of major NSR, or to create tradeable offsets or other emission reduction credits).

On the other hand, other NSR permit terms and conditions may be patently obsolete and no longer relevant to the operation of the source, such as terms regulating construction activity during the building or modification of the source, where the construction is long completed and the statute of limitations on construction-phase activities has run out. These terms no longer serve a Federal purpose and need not be included as terms of the part 70 permit. Likewise, the State will also need to identify provisions from NSR permits that are not required under Federal law because they are unrelated to the purposes of the NSR program. Examples typically include odor limitations, and limitations on emissions of hazardous air pollutants where such limitations do not reflect a section 112 standard or a SIP criteria pollutant requirement. Where the State retains such conditions, it would draft the part 70 permit to specify that they are State-only conditions and incorporate them into the part 70 permit as such.

New source review permits are also likely to contain other terms that are not patently obsolete or irrelevant, but that the source and permitting authority agree are nevertheless extraneous, out-dated, or otherwise environmentally insignificant and inappropriate for inclusion in a federally-enforceable permit. Candidates for this exclusion include: (1) information incorporated by reference from an application for a preconstruction permit (to the extent this information is needed to enforce NSR permit terms it should be converted to terms in the part 70 permit), or (2) original terms of a preconstruction permit that has been superseded by other terms related to operation. The propriety of excluding other types of NSR permit terms will need to be evaluated on a case-by-case basis.

The EPA believes that the above parallel processing approach should be effective in most situations to incorporate the federally significant NSR permit terms into the part 70 permit in an efficient and workable way. However, the Agency recognizes that sources and permitting authorities may experience serious burden and timing concerns in accomplishing this process. Therefore, the Agency recommends the following approach, which

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qualify for generic treatment in the application and the permit as described in Section 4. Generic Grouping of Emissions Units and Activities.

EPA believes is consistent with the current part 70 rule. Under this approach, sources may in their part 70 permit applications, propose candidate terms from their current NSR permits which they reasonably believe should be considered for revision, deletion, or designation as being enforceable only by the State. Upon submittal of the application, the source would, as a Federal matter, only need to certify compliance status for those remaining NSR terms that it had earmarked for incorporation into the part 70 permit as federally-enforceable terms. The permitting authority, as part of the collaborative part 70 permit issuance process, would review the list of terms recommended in good faith by the source for deletion, revision, or State-only status and would ultimately agree or disagree with the source's proposal. Where the permitting authority decided that terms beyond those proposed as federally enforceable by the source should be retained to implement NSR, the source would be required to re-certify its application with respect to those NSR terms. Failure to do so within the timeframe required by the permitting authority would result in an inaccurate certification and the loss of the application shield.

The resolution of which NSR terms are to be incorporated should ideally be completed by the time of initial part 70 permit issuance. However, the resources available for timely issuance of thousands of part 70 permits may not be sufficient to achieve final resolution of NSR permit terms by permit issuance. Serious concerns have been raised by industry that they should not be subject to premature incorporation of these remaining permit terms into the part 70 permit. They believe that this could trigger, in many cases, inappropriate part 70 responsibilities (e.g., monitoring, reporting, and recordkeeping) for these terms.

The EPA believes that the current part 70 rule allows permitting authorities to address these concerns as well. Where States wish to extend the time in which to decide whether to revise, delete, or designate as State-only certain terms of current NSR permits, permitting authorities may stipulate in initial part 70 permits that any of those NSR terms so listed in the permit will be reviewed and be deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit). Prior to the deadline, the permitting authority would delete, revise, or make federally enforceable any terms that the State determined warranted such treatment. In the meantime, all other terms would continue to be enforceable under State law as terms of the NSR permit. The permitting authority would incorporate any NSR permit terms that were not deleted or designated as State-only into the federally enforceable portion of the part 70 permit consistent with its approved part 70 permit

revision procedures.

Finally the permitting authority may be required to add new terms to the part 70 permit to make any incorporated NSR permit terms enforceable from a practical standpoint, to reflect operation rather than construction, or to meet other part 70 requirements regarding the content of permits. Where a permitting authority has already converted the NSR permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70 permits.

8. Section 112(r) Requirements

For sources otherwise required to obtain a part 70 permit, complete applications merely need to acknowledge (where appropriate) that the on-site storage and processing of section 112(r) chemicals may require the source to submit a section 112(r) risk management plan (RMP) when that requirement becomes applicable. This acknowledgment should be based on the "List of Regulated Substances and Their Thresholds" rule [59 FR 4478 (January 14, 1994)]. Sources are not required to quantify emissions of these substances (unless they are also pollutants listed under section 112(b), and such quantification is needed for fee collection purposes). To resolve issues of applicability, permitting authorities may ask for additional information from certain sources regarding materials stored and transferred and the amounts of chemicals used in certain processes if the source does not indicate its potential applicability with respect to the section 112(r) requirement to file an RMP.

9. Research and Development Activities

The EPA expects that R&D activities will generally be exempt from part 70 and not be involved in the part 70 application process since they are typically independent, non-major sources. The July 1992 part 70 preamble provided general guidance explaining that R & D activities could often be regarded as separate "sources" from any operation with which it were co-located (57 FR 32264 and 32269). The Agency is clarifying and confirming their substantial flexibility under the ongoing rulemaking action to revise part 70.

Some R&D activities can still be subject to part 70 because they are either individually major or a support facility making significant contributions to the product of a collocated major manufacturing facility. In addition, laboratory activities which

involve environmental and quality assurance/quality control sample analysis, as well as R&D, present similar permitting problems. Such activities should be eligible for classification as an insignificant activity if there are no applicable SIP requirements. Where applicable SIP requirements do apply, they typically consist of "work practice" (e.g., good laboratory practice) requirements. In this situation, permit applications would need to contain only statements acknowledging the applicability of, and certifying compliance with, these work practice requirements. There is no need for an extensive inventory of chemicals and activities or a detailed description of emissions from the R&D or laboratory activity. Similarly, there would be no need to monitor emissions as a part 70 permit responsibility.

10. Applications from Non-major Sources

Applications for non-major sources subject to part 70 can be less comprehensive than those for major sources. (Note that virtually all States have deferred the applicability of these sources as provided by part 70.) While permits for major sources must include all applicable requirements for all emissions units at the source, § 70.3(c)(2) stipulates that permits for non-major sources have to address only the requirements applicable to emissions units that cause the source to be subject to part 70 (e.g., requirements of sections 111 or 112 of the Act applicable to non-major sources). Other emissions units at non-major sources that do not trigger part 70 applicability, even if they are subject to applicable requirements, do not have to be included in the permit. Since permits for non-major sources do not have to include applicable requirements for emissions units that do not cause the source to be subject to part 70, no information on those units is needed in the permit application.

11. Supporting Information

The great majority of the detailed background information relied upon by the source to prepare the application need not be included in the application for it to be found complete. Even though certain emissions-related calculations [see § 70.5(c)(3)(viii)] are required, the application size can still be significantly reduced if the permitting authority allows the source to submit examples of calculations performed that illustrate the methodology used. Cost savings can be realized, even though the calculations are still performed, in that the efforts to exhaustively record them in the application can be omitted.

The permitting authority can request additional, more

detailed information needed to justify any questionable information or statement contained in the initial application or to write a comprehensive part 70 draft permit. Applications for permits which will establish a requirement uniquely found in the part 70 permit (such as an alternative reasonably available control technology (RACT) limit) would require more supporting information, including any required demonstration.

C. Quality of Required Information

The quality of emissions estimates where they are needed in the part 70 permit application depends on the reasonable availability of the necessary information and on the extent to which they are relied upon by the permitting authority to resolve disputed questions of major source status, applicability of requirements, and/or compliance with applicable requirements. In general, where estimates of emissions are necessary, reasonably-available information may be used.

Generally, the emissions factors contained in EPA's publication AP-42 and other EPA documents may be used to make any necessary calculation of emissions. When an acceptable range of values is defined for a general type of source situation, permitting authorities have considerable discretion to define the appropriate emissions factor value within that range. States are most often better able to make such decisions given their closer proximity to the particular source and its operation.

For purposes of certifying the truth and accuracy of the application, part 70 requires that emissions estimates be expressed in terms consistent with the applicable requirement. This does not mean that only test data is acceptable. Rather, the source may rely on any data using the same units and averaging times as in the test method. New testing is not required and emission factors are presumed to be acceptable for emissions calculations, but more accurate data are preferred if they are readily available. Emissions factors provided by permitting authorities are also allowed where EPA emission factors are missing or State or industry values provide greater accuracy. The applicant may also use other estimation methods (materials balance, source test, or continuous emissions monitoring (CEM) data) when emission estimates produced through the use of emission factors are not appropriate.

In disputed cases, the source may propose the least costly alternative estimation method as long as it will produce acceptable data. Owners and operators may propose use of emissions estimation methods of their choosing to the permitting authority when the resulting data is more accurate than that

obtained through the use of emissions factors. Sources are encouraged to contact the permitting authority to discuss the appropriate estimation techniques for a particular circumstance.

Emissions estimates when they are necessary for HAPs often become less precise below certain thresholds. The need for quantification or even estimation should therefore decrease the lower the levels are that are present. For example, VOC estimates based on manufacturer's safety data sheets may indicate that trace amounts of certain HAPs may be present. It is reasonable for the source to report these HAPs as present in trace amounts and not quantify them further or perform expensive testing procedures to collect more accurate data, unless the permitting authority requires otherwise. On the other hand, more precise estimates might be required to defend a position that a VOC source was below emissions cutoffs which subject it to a RACT requirement if the source appeared close to that threshold and it exact emissions level was in doubt.

D. Phase-In of Details for Completeness Determinations

Permitting authorities have considerable flexibility in processing the expected huge volume of permit applications so as to issue initial permits by the required deadline of 3 years after program approval. The § 70.5(c) requirement that a permit application will be complete only if it addresses all the information required in this section must be interpreted in light of the July 1992 preamble (which clarifies the § 70.5(c) requirement for completeness in terms of information needed by the permitting authority to begin processing of an application). Accordingly, the permitting authority may balance the need for information to support timely permit issuance pursuant to the schedule approved in the program against the workload associated with managing and updating as necessary the initially submitted information.

Sources must submit complete applications within 12 months of the effective date (i.e., 30 days after the Federal Register date where EPA approves the program) of a State part 70 program or on whatever schedule for application submittal the State establishes in its approved program for its sources. Permitting authorities may also require application submittals prior to part 70 program approval under State authority, however, a failure to comply with any application deadline earlier than the effective date for the program cannot be considered a violation of the Act.

The current rule allows permitting authorities to implement a two-step process for application completeness, first

determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. For example, permitting authorities can initially find an application complete if it defines the applicable requirements, and major/minor source status; certifies compliance status with respect to all applicable requirements (subject to the limitation on this action provided for in Section H. Compliance Certification Issues); and allows the permitting authority to determine the approved permit issuance schedule. The application must also include a certification as to its truth, accuracy, and completeness. In any event, permitting authorities must award the application shield if the source submits a timely application which meets the criteria for completeness in § 70.5(c).

Under this approach, if the source has supplied at least initial information in all the areas required by the permit application form and has certified it appropriately, the permitting authority generally has flexibility to judge the application to be complete enough to begin processing. Accordingly, there should normally be no need for an applicant to submit an application many days in advance in order to build in extra time for an iterative process before the relevant submittal deadline. Sources scheduled for permitting during the first year of the transition schedule must submit any additional information as needed to meet fully the requirements of § 70.5(c) for completeness on a more immediate schedule so that their permit can be issued within that first year.

E. Updates to Initially Complete Applications Due to Change

Sources, to maintain their application's status as complete and therefore preserve the application shield, must respond to requests from the permitting authority for additional information to determine or evaluate compliance with applicable requirements within the reasonable timeframe established by the permitting authority. Where more information is needed in the permit application to continue its processing, permitting authorities may opt to add the additional information to the application themselves or require additional submittals from the source. Sources must promptly certify any additional information submitted by them and certify or revise any relevant information furnished by the permitting authority.

1. Changing Emissions Information

Updates to the initially complete application may be required if emissions information, such as revised emissions factors, changes or additional NSR projects are approved after an

application is submitted. The exact response required will depend in part on whether the change affects a source's applicable requirements or its compliance status and when it is discovered. If, after consultation with the permitting authority, it is determined that the applicability status of the source is affected by new emissions information (e.g., the change causes the source to become newly subject to applicable requirements or may affect its ability to comply with a current NSR permit condition), then the source must promptly submit the new information to the permitting authority, identify any new requirements that apply, and certify any change in the source's compliance status. The issuance of an NSR permit may also add a new applicable requirement that would need to be addressed by the part 70 permit.

If the new information is discovered before the draft permit has been issued, it should be submitted as an addendum to the application, and the draft permit should reflect the new information. The permitting authority and a source can agree on set intervals at which such updating is required in order to structure the process and make it more efficient. If new information is discovered after the draft permit has completed public review but before the proposed permit has been issued, the information should still be submitted, and it is the responsibility of the permitting authority to revise the permit accordingly.

If new information is discovered after the permit has been issued, the resulting change could, at the discretion of the permitting authority, be addressed as a permit revision or as a reopening. If the change would not allow a source to comply with its current permit, the source should initiate a permit revision.

If the information does not affect applicability of, or compliance with, any applicable requirement (e.g., only alters the tpy emissions estimates of regulated pollutants), the information need not be submitted until permit renewal. If the permitting authority requires submittal of new information earlier, however, then it must be submitted according to reasonable deadlines established by the permitting authority.

2. Other Changes

Other changes can also occur that would require the source, even absent a specific request from the permitting authority, to propose an update to an initially complete application. One example is where a new regulatory requirement becomes applicable to the source before the permit is issued.

F. Content Streamlining

1. Cross Referencing

The permitting authority may allow the application to cross-reference previously issued preconstruction and part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided the referenced materials are currently applicable and available to the public. The accuracy of any description of such cross-referenced documents is subject to the certification requirements of part 70. Such documents must be made available as part of the public docket on the permit action, unless they are published and/or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent). In addition, materials that are available elsewhere within the same application can be cross referenced to another section of the application.

In many cases, incorporation of prior information from previously issued permits would be useful. Examples are where a source is updating a part 70 permit by referencing the appropriate terms of a NSR permit or renewing a part 70 permit by referencing the current permit and certifying that no change in source operation or in the applicable requirements has occurred. Even where existing permit conditions are expressed in terminology other than that used in the part 70 permit, cross-referencing can still be possible. Such citations, however, would have to provide sufficient translations of terms to ensure the same effect.

As discussed previously, the permitting authority may determine that certain terms and conditions of existing NSR permits are obsolete, environmentally insignificant, or not germane with respect to their incorporation into part 70 permits. Even when a NSR permit contain such terms, citation can still be used to the extent that the NSR permit provisions appropriate for part 70 permit incorporation are clearly identified through the cross-reference. Also, the NSR permit terms not cited for part 70 incorporation are still in effect as a matter of State law unless and until expressly deleted by the permitting authority. Wherever this citation approach is used, the permitting authority should review all referenced terms to ensure they meet part 70 requirements for enforceability.

The EPA believes that one reason for the excessive length and cost of some permit applications is that sources believe they are required to paraphrase or re-state in their entirety the

provisions of the Code of Federal Regulations (CFR) or other repositories of applicable requirements. Citations can be used to streamline how applicable requirements are described in an application and will also facilitate compliance by eliminating the possibility that part 70 permit terms will conflict with underlying substantive requirements. Indeed, many States have taken a citation-based approach as a way of streamlining applications and permits. Thus, a source could cite, rather than repeat in its application, the often extensive details of a particular applicable requirement (including current NSR permit terms), provided that the requirement is readily available and its manner of application to the source is not subject to interpretation. The citation must be clear with respect to limits and other requirements that apply to each subject emissions unit or activity. For example, a storage tank subject to subpart Kb of the NSPS would cite that requirement in its application rather than re-typing the provisions of the CFR.

2. Incorporation of Part 70 Applications by Reference into Permits

The EPA discourages the incorporation of entire applications by reference into permits. The concern with incorporation of the application by reference into the permit on a wholesale basis is the confusion created as to the requirements that apply to the source and the unnecessary limits to operational flexibility that such an incorporation might cause.

If States do incorporate part 70 applications by reference in their entirety into part 70 permits, EPA will consider information in the application to be federally enforceable only to the extent it is needed to make other necessary terms and conditions enforceable from a practical standpoint. Moreover, EPA does not interpret part 70 to require permit revisions for changes in the other aspects of the application.

3. Changing Application Forms

The EPA urges States to re-examine their permit application forms in light of their experience to date and the contents of this guidance. Although the revision of an application form requires a program revision when it impacts any portion of the form which was relied upon by EPA in approving the part 70 program for the State, such a revision can, in most cases, be accomplished through an exchange of letters with the appropriate EPA Regional Office. Changes made to implement this guidance can be effected immediately with implementing documents sent to the appropriate EPA Regional Office. Similarly, a State could notify the Regional Office in writing that the State intends to

make completeness determinations based on completion of parts of the existing forms to avoid costly changes in computerized form systems that have already been developed. This is another way that a State can act quickly to streamline application requirements while minimizing its own administrative burdens.

G. Responsible Official

Part 70 provides that a "responsible official" must perform certain important functions. In general, responsible officials must certify the truth, accuracy, and completeness of all applications, forms, reports, and compliance certifications required to be submitted by the operating permits program [§ 70.5(d)]. As an example, a responsible official must certify the truth, accuracy, and completeness of all information submitted as part of a permit application [§ 70.5(a)(2)] and that the source is in compliance "with all applicable requirements" under the Act [§ 70.5(c)(9)(i)]. In addition, part 70 requires responsible officials to certify monitoring reports, which must be submitted every 6 months, and "prompt" reports of any deviations from permit requirements whenever they occur.

The definition of responsible official in § 70.2 identifies specific categories of officials that have the requisite authority to carry out the duties associated with that role. The definition provides in part that the following corporate officials may be a responsible official:

> . . . a president, secretary, treasurer, or vice president or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit . . . . [emphasis added]

Similarly, for public agencies, the definition indicates the following persons may be responsible officials:

> . . . a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency . . . . [emphasis added]

Concerns have been raised over the apparent narrowness of the current definition of responsible official. In the August 1994 Federal Register notice, EPA responded to those concerns

related to acid rain by proposing a revision to the definition of responsible official to allow a person other than the designated representative to be the responsible official for activities not related to acid rain control at affected sources [59 FR 44527].

To respond to further concerns over the definition of responsible official as it applies to partnerships formed by corporations, or partnerships, or a combination of both, EPA confirms that the same categories of officials who can act as responsible officials for corporations can also act in that capacity for partnerships where they carry out responsibilities substantially similar to those in the same categories in corporations. Partnerships that are essentially unions of corporations and/or partnerships will normally have the same management needs as corporations and so will establish a management structure with categories of officials similar to those of most corporations. In these partnerships, the persons with the knowledge and authority to assure regulatory compliance are the officials of the partnership.

Interpreting the definition of responsible official as limiting the class of persons in partnerships that may be responsible officials to general partners would frustrate the intent of the definition because it would in many instances actually result in designating a person that is not in a position to adequately fulfill the role of a responsible official. For this reason, EPA believes it is reasonable for permitting authorities, in the case of partnerships composed of corporations and/or partnerships, to allow for the same flexibility in designating a responsible official as would be the case for corporations.

H. Compliance Certification Issues

To make the required compliance certification to accompany the initial part 70 permit applications, sources are required to review current major and minor NSR permits and other permits containing Federal requirements, SIP's and other documents, and other Federal requirements in order to determine applicable requirements for emission units. The EPA and/or the State permitting authority may request additional information concerning a source's emissions as part of the part 70 application process.

Companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. However, EPA expects companies to rectify past noncompliance as it is discovered. Companies remain subject to enforcement actions for any past

noncompliance with requirements to obtain a permit or meet air pollution control obligations. In addition, the part 70 permit shield is not available for noncompliance with applicable requirements that occurred prior to or continues after submission of the application.

ATTACHMENT A

LIST OF ACTIVITIES THAT MAY BE TREATED AS "TRIVIAL"

The following types of activities and emissions units may be presumptively omitted from part 70 permit applications. Certain of these listed activities include qualifying statements intended to exclude many similar activities.

Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources.

Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act.

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

Non-commercial food preparation.

Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

Janitorial services and consumer use of janitorial products.

Internal combustion engines used for landscaping purposes.

Laundry activities, except for dry-cleaning and steam boilers.

Bathroom/toilet vent emissions.

Emergency (backup) electrical generators at residential locations.

Tobacco smoking rooms and areas.

Blacksmith forges.

Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not

otherwise triggering a permit modification.[1]

Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

Portable electrical generators that can be moved by hand from one location to another[2].

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals.[3]

Air compressors and pneumatically operated equipment, including hand tools.

Batteries and battery charging stations, except at battery manufacturing plants.

Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP.[4]

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[1]Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must still get a permit if otherwise required.

[2]"Moved by hand" means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device.

[3]Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production level thresholds. Brazing, soldering, welding and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

[4]Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids should be based on size limits

Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Equipment used to mix and package, soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Drop hammers or hydraulic presses for forging or metalworking.

Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

Vents from continuous emissions monitors and other analyzers.

Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation.

Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP.

CO_2 lasers, used only on metals and other materials which do not emit HAP in the process.

Consumer use of paper trimmers/binders.

Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

Laser trimmers using dust collection to prevent fugitive emissions.

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such as storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents.[5]

Routine calibration and maintenance of laboratory equipment or other analytical instruments.

Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

Hydraulic and hydrostatic testing equipment.

Environmental chambers not using hazardous air pollutant (HAP) gasses.

Shock chambers.

Humidity chambers.

Solar simulators.

Fugitive emission related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

Process water filtration systems and demineralizes.

Demineralized water tanks and demineralizer vents.

Boiler water treatment operations, not including cooling towers.

Oxygen scavenging (de-aeration) of water.

Ozone generators.

Fire suppression systems.

Emergency road flares.

Steam vents and safety relief valves.

Steam leaks.

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[5]Many lab fume hoods or vents might qualify for treatment as insignificant (depending on the applicable SIP) or be grouped together for purposes of description.

Steam cleaning operations.

Steam sterilizers.

March 5, 1996

MEMORANDUM

SUBJECT: White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program

FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Office of Ecosystem Protection, Region I
Director, Environmental Planning and Protection Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division, Region VI
Director, Air, RCRA and TSCA Division, Region VII
Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air, Region X

Please find attached White Paper Number 2 for improved implementation of part 70 operating permits programs. This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves. It is intended to supplement, not obviate, the guidance provided in EPA's "White Paper for Streamlined Development of part 70 Permit Applications" (July 10, 1995). This guidance is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

The attached guidance is divided into five sections as follows:

II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

II. B. Development Of Applications And Permits For Outdated SIP Requirements.

II. C. Treatment Of Insignificant Emissions Units.

II. D. Use Of Major Source And Applicable Requirement Stipulation.

II. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Streamlining will lead to substantial reductions in permitting burdens and improved part 70 implementation by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements (which can be an alternative to all those requirements being subsumed). It will also allow various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. Any such streamlining must provide that compliance with the streamlined limit would assure compliance with all applicable requirements. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved State implementation plan, the streamlined treatment of insignificant emissions units, the use of stipulations by sources as to which regulations apply, and the cross referencing rather than repetition of certain existing information.

There is an immediate need for the implementation of this guidance. A large number of sources have filed complete part 70 applications, and increasing numbers of these submittals are being processed for permit issuance. I strongly encourage you to work with your States to effect near-term use of this guidance.

Substantial contributions to this White Paper have come from the California Title V Implementation Working Group. I want to thank you and your staff for your support and Region IX in particular for their leadership and considerable efforts in developing and completing this paper. I invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345, Ginger Vagenas of Region IX at (415) 744-1252, or Roger Powell at (919) 541-5331.

Attachment

cc: M. Trutna (MD-12)

G. Vagenas (Region IX)
R. Powell (MD-12)
A. Schwartz (2344)

WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION OF THE PART 70 OPERATING PERMITS PROGRAM

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

March 5, 1996

Contacts: Michael A. Trutna (919) 541-5345
Ginger Vagenas (415) 744-1252
Roger Powell (919) 541-5331

WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION OF THE PART 70 OPERATING PERMITS PROGRAM

March 5, 1996

I. OVERVIEW.

This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves and to remove unintended barriers and administrative costs. It is also intended to build on and expand the guidance provided in the Environmental Protection Agency's (EPA) "White Paper for Streamlined Development of Part 70 Permit Applications" (July 10, 1995). White Paper Number 2 supplements, not obviates, the first White Paper. Both papers should be consulted for guidance in improving the implementation of title V of the Clean Air Act (Act) (i.e., part 70 operating permits programs). In particular, White Paper Number 2 is designed to simplify the treatment of overlapping regulatory requirements and insignificant emissions units and to clarify the use of citations and incorporation by reference in the part 70 permitting process. This effort is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

Substantial contributions to this White Paper have come from the California Title V Implementation Working Group (Working Group). The California Air Resources Board and several California air districts and industries which (together with EPA) make up the Working Group have decades of experience with operating permits. These operating permits programs are generally just one component of air programs that, in many districts, also include local emissions standards (often with associated recordkeeping and reporting requirements), monitoring requirements, inspections, source testing, and new source review (NSR). The EPA has found the insights and recommendations of the Working Group extremely useful in integrating these various requirements using the part 70 permitting process. While much of the guidance contained herein addresses situations arising in California, it is available for use nationwide.

This guidance is divided into five sections and two attachments which are generally summarized as follows (the reader is, however, referred to the applicable main sections of the guidance for more detailed information):

Section II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

The EPA and States have developed different and often

overlapping applicable requirements governing the same emissions units to serve the purposes of different air programs. As a result, emissions units at a stationary source may be subject to several parallel sets of requirements. This can result in some of the requirements being redundant and unnecessary as a practical matter, even though the requirements still legally apply to the source. In cases where compliance with a single set of requirements effectively assures compliance with all requirements, compliance with all elements of each of the overlapping requirements may be unnecessary and could needlessly consume resources. For example, a source could be subject to overlapping standards that result in two or more different emissions limits for the same pollutant and two or more source monitoring requirements for instrumentation, recordkeeping, and reporting.

Today's guidance describes how a source may propose streamlining to distill or "streamline" multiple overlapping requirements into one set that will assure compliance with all requirements. According to the guidance, multiple emissions limits may be streamlined into one limit if that limit is at least as stringent as the most stringent limit. (Limitations that apply to the streamlining of acid rain requirements are described in the main section of this guidance.) If no one requirement is unambiguously more stringent than the others, the applicant may synthesize the conditions of all the applicable requirements into a single new permit term that will assure compliance with all requirements. The streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emissions limit, providing they would assure compliance to the same extent as any subsumed monitoring. Thus, monitoring, recordkeeping, or reporting to determine compliance with subsumed limits would not be required where the source implements the streamlined approach.

It is important to emphasize that while streamlining may be initiated by either the applicant or the permitting authority, it can only be implemented where the permit applicant consents to its use.

Section II. B. Development Of Applications And Permits For Outdated SIP Requirements.

Historically, long periods of time have been required to review and approve (or disapprove) SIP revisions. The EPA has undertaken a number of reforms to its SIP approval process and is continuing to make significant progress in

reducing the amount of time required for taking action on SIP revisions. Despite the progress we have made to date, there are many local rules now pending EPA review and approval for inclusion in the SIP. The gap between the approved SIP and the State rules is of concern because States and local agencies enforce their current rules (which are usually more stringent than the approved SIP rules) and often, as a practical matter, no longer enforce the superseded and outdated rules in the SIP. On the other hand, EPA only recognizes and can only enforce the SIP-approved rules. This situation can cause confusion and uncertainty because some sources are effectively subject to two different versions of the same rules. Part 70's application, certification, and permit content requirements highlight this longstanding concern.

The most problematic situation arising from the gap between the approved SIP and the State rules is where a technology-forcing rule that has been approved into the SIP is found by the State to be impossible to meet. Under these circumstances, the State would generally adopt a relaxation of this rule and submit it to EPA as a SIP revision. Until EPA is able to take action on the submitted relaxation, sources remain subject to a rule that is impossible to meet.

This section of the guidance largely addresses the problem by authorizing permitting authorities and their sources to base permit applications on State and local rules that have been submitted for SIP approval, rather than on the potentially obsolete approved SIP provisions that they would replace. Such reliance on pending State and local rules is proper when the permitting authority has concluded that the pending rule will probably be approved, or when the source believes it can show that the pending rule is more stringent than the rule it would replace. However, if the pending rule is not more stringent than the rule it would replace, the permit cannot be issued until the pending rule is approved.

Section II. C. Treatment Of Insignificant Emissions Units.

This section provides for the streamlined treatment of generally applicable requirements that apply to "insignificant" emissions units (IEU's). It is intended to address current concerns that resources will be unnecessarily consumed by matters of trivial environmental importance.

The guidance clarifies that the permitting authority has broad discretion to tailor the permit application and

permit for small equipment and activities as long as compliance with Federal requirements is assured. For both the permit application and the permit, information on IEU's may be generically grouped and listed without emissions estimates, unless emissions estimates are needed for another purpose such as determining the amount of permit fees that are calculated using total source emissions. This approach would utilize standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and its enforcement are clear.

The EPA also believes that for IEU's, a responsible official's initial compliance certification may be based on available information and the latest cycle of required information.

The guidance further provides that the permitting authority can use broad discretion in determining the nature of any required periodic monitoring. The EPA's policy on IEU's is based on the belief that these emissions points are typically associated with inconsequential environmental impacts.

Section II. D. Use Of Major Source And Applicable Requirement Stipulation.

There have been concerns expressed that extensive new emissions data would be needed to verify major source status or the applicability of Federal requirements. White Paper Number 2 clarifies that for applicability purposes, a source familiar to the permitting authority may simply stipulate in its application that it is major or that Federal requirements apply as specified in the application. The paper clarifies that there is no need to prepare and submit extensive information about the source that "proves" it is subject to any requirements that it stipulates are applicable. This does not affect the requirement to provide information that is otherwise required by part 70.

Section II. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Concerns have been raised that a source must re-prepare and resubmit information that is readily available, or that the permitting authority already has, to complete part 70 permit applications. In addition, similar concerns have been voiced regarding the large and potentially unnecessary burden of developing permits which repeat rather than reference certain types of regulatory requirements that

apply to the source (e.g., monitoring and testing protocols). The guidance clarifies that, in general, the permitting authority may allow information to be cited or cross-referenced in both permits and applications if the information is current and readily available to the permitting agency and to the public. The citations and references must be clear and unambiguous and be enforceable from a practical standpoint. After permits specify which emissions limits apply to identified emissions units, cross-referencing can be authorized for other requirements (e.g., monitoring, recordkeeping, and reporting).

Attachment A provides guidance on using the part 70 permit process to establish alternative test methods, while Attachment B provides example SIP language that could be used by both part 70 and non-part 70 sources to establish alternative requirements without the need for a prior source-specific SIP revision. This guidance should be particularly useful to those seeking greater certainty or to establish alternative test methods to those now approved by EPA. **[Note that Sections III. and beyond in Attachment B are currently in draft form.]**

Streamlining will lead to substantial reductions in permitting burdens by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements. It will also lower current burden levels by allowing various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved SIP, the streamlined treatment of insignificant emissions units, and the use of stipulations and the cross-referencing rather than repetition of certain existing information in part 70 applications and permits.

The EPA believes that the guidance contained herein may be implemented by permitting authorities and sources without revisions to part 70 programs, unless a provision is specifically prohibited by State regulations. In some situations, EPA will be proceeding in parallel to issue clarifying rules. The EPA strongly encourages States to allow sources to take advantage of the streamlining opportunities provided in this guidance. The Agency also suggests the permitting authority develop information about permits issued with successful streamlining and make it available to other similar sources to help avoid repetitive costs.

Sources are advised to consult with their permitting authority to understand how the policies of this White Paper will be implemented. In several situations (particularly those where sources have already filed complete applications), permitting authorities may choose to propose streamlining options and, if mutually agreeable, work with the source to support a draft permit containing a streamlined limit. Where EPA is the permitting authority pursuant to part 71 regulations, the Agency will implement both White Papers to the extent possible and promote similar implementation where EPA delegates responsibility for the part 71 program to a State.

The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

II. ADDITIONAL GUIDANCE ON STREAMLINED DEVELOPMENT OF PART 70 PERMITS AND APPLICATIONS.

A. Streamlining Multiple Applicable Requirements[1] On The Same Emissions Unit(s).[2]

1. Issue.

Can multiple redundant or conflicting requirements (emissions limits, monitoring, recordkeeping, reporting requirements) on the same emissions unit(s) be streamlined into a

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[1]Title IV applicable requirements are an exception to this general rule. As set out in § 72.70(b), to the extent that any requirements of part 72 and part 78 are inconsistent with the requirements of part 70, part 72 and part 78 will take precedence and will govern the issuance, denial, revision, reopening, renewal, and appeal of the acid rain portion of an operating permit. The subsequent descriptions of streamlining therefore apply to requirements under parts 72 and 78 only to the extent that such requirements are, at the option of the applicant, used as streamlining requirements because they are the most stringent applicable requirements.

[2]Emissions unit(s) means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant (as defined in section 70.2) or any pollutant listed under section 112(b) of the Act. It is used in this paper to include specifically a grouping of emissions units at a stationary source that shares the same applicable requirement and compliance demonstration method for a given pollutant.

single set of understandable and enforceable permit conditions? May an applicant propose to minimize or consolidate applicable requirements? May a permitting authority develop such a proposal? How would a permit application with a streamlining proposal satisfy compliance certification requirements?

2. Guidance.

A source, at its option, may propose in its application to streamline multiple applicable requirements into a single set of permit terms and conditions[3]. The overall objective would be to determine the set of permit terms and conditions that will assure compliance with all applicable requirements for an emissions point or group of emissions points so as to eliminate redundant or conflicting requirements. Otherwise applicable requirements that are subsumed in the streamlined requirements could then be identified in a permit shield. The process would be carried out in conjunction with the submittal and review of a part 70 permit application, as an addendum to an application, or as an application for a significant revision to the part 70 permit (unless EPA in its revisions to part 70 authorizes permitting authorities to use a less extensive permit revision process). The EPA plans to revise part 70 to provide that the compliance certification required with initial application submittals may be based on the proposed streamlined applicable requirement where there is sufficient source compliance information on which to base such a certification.

The permitting authority, at its option, may evaluate multiple applicable requirements for a source category and predetermine an acceptable streamlining approach. Such evaluations should be made readily available to applicants. It is up to the applicant, however, to request in its application that such streamlined requirements be contained in the part 70 permit. Where streamlining would be of mutual interest, the permitting authority and the source could work together during the permit development stage to establish a basis for a streamlined limit prior to the issuance of a draft permit. This

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[3]The EPA recognizes that the described streamlining process may not be allowed by all State regulations or be warranted or desired for all applicable requirements. Similarly, partial streamlining (i.e., the streamlining of some, but not all, applicable requirements that apply to the same emissions units) may be most cost effective where difficult comparisons or correlations are needed for streamlining the other remaining applicable requirements. In addition, there is no barrier to more extensive
streamlining occurring in the future.

cooperative activity must result in a record consistent with this guidance which supports the draft permit containing the streamlined requirement. The approach might be particularly useful where a source has already submitted a complete part 70 permit application and the permitting authority does not want to require the source to submit a formal amendment to its application. Any streamlining demonstration must be promptly submitted to EPA upon its availability and in advance of draft permit issuance unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

In addition, general permits could be useful to allow the transfer of streamlined requirements from the first source to be covered by them to other similar sources or emissions units. The information development and review conducted as part of streamlining for an individual source can be used by the permitting authority to generate a general permit for similar sources or portions of sources. If a general permit were used, EPA and public review beyond that needed to issue the general permit would not be necessary when sources subsequently applied for the streamlined permit conditions established under the general permit. Even where a general permit is not issued, the availability of information obtained from the streamlining of one source may be useful as a model for future streamlining actions involving other similar sources.

Streamlined permit terms should be covered by a permit shield. The permit shield will result in an essential degree of certainty by providing that when the source complies with the streamlined requirement, the source will be considered to be in compliance with all of the applicable requirements subsumed under the streamlined requirement. Where the program does not now provide for a permit shield, the permit containing streamlined requirements should clarify this understanding (See section II.A.3. discussion). Permitting authorities without provisions for permit shields are encouraged to add a permit shield provision at the first opportunity, if they wish to realize fully the benefits of streamlining.

Sources that opt for the streamlining of applicable requirements must demonstrate the adequacy of their proposed streamlined requirements. The following principles should govern their streamlining demonstrations:

a. The most stringent of multiple applicable emissions limitations for a specific regulated air pollutant on a particular emissions unit must be determined taking into

account[4,5]:

- o Emissions limitation formats (emissions limits in different forms must be converted to a common format and/or units of measure or a correlation established among different formats prior to comparisons);
- o Effective dates of compliance (to the extent different);
- o Transfer or collection efficiencies (to the extent relevant);
- o Averaging times[6]; and
- o Test methods prescribed in the applicable requirements[7].

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[4]Applicable requirements mean those requirements recognized by EPA, as defined in § 70.2. State and local permitting authorities may modify, eliminate, or streamline "State-only" requirements based on existing State or local law and procedures.

[5]Sources may, in the interest of greater uniformity, opt to expand the scope of an applicable requirement to more emissions units so that the same requirements would apply over a larger section of the plant or its entirety, provided compliance with all applicable requirements is assured. Though a permit may through streamlining expand the scope of applicable requirements to include new emissions units, it may not change the basis on which compliance is determined (e.g., emissions unit by emissions unit, if that is the intent of the applicable requirement).

[6]While the streamlining of requirements with varying averaging times is viable under this policy, in no event can requirements which are specifically designed to address a particular health concern (including those with short term averaging times) be subsumed into a requirement which is any less protective.

[7]The predominant case is expected to involve test methods which have been EPA approved either as part of the SIP or as part of a Federal section 111 or 112 standard. If a permitting authority is seeking to base a streamlined limit on an alternative or new test method relative to the ones already approved by EPA for the SIP or a section 111, or section 112 standard, some additional steps are needed to complete the proposed streamlining. As described in more detail in Attachment A, permitting authorities may only implement streamlining which

Limitations for specific pollutants can be subsumed by limitations on classes of pollutants providing the applicant can show that the streamlined limit will regulate the same set of pollutants to the same extent as the underlying applicable requirements. For example, a volatile organic compound (VOC) limitation could effectively subsume an organic hazardous air pollutant (HAP) limitation for a constituent such as hexane, provided the VOC limit is at least as stringent as the hexane limitation. Where a single VOC limit subsumes multiple HAP limits, the permit must be written to assure that each of the subsumed limits will not be exceeded. However, a limit for a single or limited number of compounds cannot be used to subsume a limit for a broader class (e.g., a hexane limit for a VOC limit) because this would effectively deregulate any of the class that are not covered by the more limited group.

b. Work practice requirements must be treated as follows:

o Supporting An Emissions Limit. A work practice requirement directly supporting an emissions limit (i.e., applying to the same emissions point(s) covered by the emissions limit) is considered inseparable from the emissions limit for the purposes of streamlining emissions limits. The proposed streamlined emissions limit must include its directly supporting work practices, but need not include any work practice standards that are associated with and directly support the subsumed limit(s);

o Not Supporting An Emissions Limit. Similar work practice requirements which apply to the same emissions or emissions point but which do not directly support an emissions limit may be streamlined (e.g., different leak detection and repair (LDAR[8]) programs). The

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involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority from EPA (where section 111/112 standards are involved). With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for source specific SIP revisions.

[8]For LDAR programs, stringency comparisons likely will be based on the aggregate requirements of each LDAR program (screening levels, frequency of inspection, repair periods, etc,) and the resultant overall actual emissions reduction expected

streamlined work practice requirement may be composed of provisions/elements (e.g., frequency of inspection, recordkeeping) from one or more of the similar work practice requirements, provided that the resulting composite work practice requirement has the same base elements/provisions as the subsumed work practice requirements (e.g. has a frequency of inspection or has recordkeeping if the subsumed work practice requirements have these elements/provisions).

Multiple work practice requirements which apply to different emissions or emissions points cannot be streamlined.

c. Monitoring, reporting, and recordkeeping requirements should not be used to determine the relative stringency of the applicable requirements to which they are applicable.

d. Where the preceding guidance does not allow sufficient streamlining or where it is difficult to determine a single most stringent applicable emissions limit by comparing all the applicable emissions limits with each other, sources may perform any or all the following activities to justify additional or different streamlining:

o Construct an alternative or hybrid emissions limit[9]

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from the affected equipment. In cases where a convincing demonstration cannot be made based on existing information or the regulations themselves have not clearly defined the expected emissions reduction, verifying test data may be required. Alternatively, the applicant, the permitting authority, and EPA can work together to devise a method consistent with the principles of EPA's "Protocol For Equipment Leak Emissions Estimation" (EPA-453/R-95-017, November 1995) for determining relative stringency. Where a demonstration of the relative stringency of LDAR programs as applied to the affected equipment is not feasible, sources may modify elements of a particular LDAR program to produce a program that clearly (i.e., without further analysis) assures compliance with the other applicable LDAR programs.

[9]Title V allows for the establishment of a streamlined requirement, provided that it assures compliance with all applicable requirements it subsumes. However, EPA recognizes that construction of such hybrid or alternative limits can be more complicated than the situation where the streamlined limit is one of the applicable emissions limits. Accordingly, sources and States may need more time to agree on acceptable

that is at least as stringent as any applicable requirement;

o Use a previously "State-only" requirement as the streamlined requirement when it is at least as stringent as any applicable Federal requirement it would subsume (this requirement would then become a federally-enforceable condition in the part 70 permit);

o Use a more accurate and precise test method than the one applicable (see footnote number 7) to eliminate doubt in the stringency determination; or

o Conduct detailed correlations to prove the relative stringency of each applicable requirement.

e. The monitoring, recordkeeping, and reporting requirements associated with the most stringent emissions requirement are presumed appropriate for use with the streamlined emissions limit, unless reliance on that monitoring would diminish the ability to assure compliance with the streamlined requirements.[10] To evaluate this presumption, compare whether the monitoring proposed would assure compliance with the streamlined limit to the same extent as would the monitoring applicable to each subsumed limit. If not, and if the monitoring associated with the subsumed limit is also relevant to and technically feasible for the streamlined limit, then monitoring associated with a subsumed limit (or other qualifying monitoring[11]) would be included in the permit.[12] The recordkeeping and reporting

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demonstrations and may wish to defer such streamlining until after issuance of the initial part 70 permit.

[10]Quality assurance requirements pertaining to continuous monitoring systems should be evaluated using the same approach.

[11]The applicant may propose alternative monitoring of equal rigor. Permitting authorities may only implement streamlining which involves alternative or new monitoring methods within the flexibility granted by the SIP and any delegation of authority from
EPA (where section 111/112 standards are involved).

[12]Permitting authorities and sources should presume that existing monitoring equipment [such as continuous emissions monitors (CEMs)] required and/or currently employed at the source should be retained. A permitting authority or applicant would have the opportunity to demonstrate that retention of such

associated with the selected monitoring approach may be presumed to be appropriate for use with the streamlined limit[13,14,15].

f. Permitting authorities must include citations to any subsumed requirements in the permit's specification of the origin and authority of permit conditions. In addition, the part 70 permit must include any additional terms and conditions as necessary to assure compliance with the streamlined requirement. In all instances, the proposed permit terms and conditions must be enforceable as a practical matter.

3. Process.

Streamlining may be accomplished through an applicant proposing to streamline multiple requirements applicable to a source, the permitting authority developing streamlining options for sources or source categories that would be subsequently accepted at the election of permittees, or the applicant working in agreement with the permitting authority after filing an

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monitoring equipment is inappropriate, such as when the monitoring equipment is no longer relevant or is technically infeasible (e.g., the source has switched to a closed loop process without emissions or the streamlined limit corresponds to levels too low for a monitor to measure, such as SO_2 emissions from a boiler firing pipeline quality natural gas.)

[13]Where recordkeeping is the means of determining compliance (e.g., in the miscellaneous metal parts and products coating rules, the typical role of monitoring is fulfilled by recordkeeping), the appropriate recordkeeping would be determined in the same manner described for monitoring.

[14]Where a standard includes recordkeeping associated with a limit in addition to recordkeeping linked to a monitoring device (e.g., a coating facility that has recordkeeping requirements pertaining to coating usage, as well as recordkeeping for monitoring associated with an add-on control), both types of recordkeeping must be incorporated into the permit.

[15]The result offers considerable potential to reduce the different reporting burdens associated with different applicable requirements well beyond what was previously available (e.g., synchronizing the required reporting cycles from different applicable requirements to coincide with the most stringent one beginning at the earliest required date). (See also Final General Provisions, § 63.10(a)(5), March 16, 1994.)

initial complete application. The first six of the following actions wuld be taken by the source or, as appropriate, by the permitting authority. The level of effort to complete these actions will depend on the relative complexity of the streamlining situation. The permitting authority would then perform steps seven and eight.

Step One - Provide a side-by-side comparison of all requirements included in the streamlining proposal that are currently applicable and effective for the specific emissions units of a source[16]. Distinguish between requirements which are emissions and/or work practice standards, and monitoring and compliance demonstration provisions.

Step Two - Determine the most stringent emissions and/or performance standard (or any hybrid or alternative limits as appropriate) consistent with the above streamlining principles and provide the documentation relied upon to make this determination. This process should be repeated for each emissions unit pollutant combination for which the applicant is proposing a streamlined requirement.

Step Three - Propose one set of permit terms and conditions (i.e., the streamlined requirements) to include the most stringent emissions limitations and/or standards, appropriate monitoring and its associated recordkeeping and reporting (see section II.A.2.e.), and such other conditions as are necessary to assure compliance with all applicable requirements.

Step Four - Certify compliance (applicant only) with

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[16]A future applicable requirement (e.g., MACT standard newly promulgated under section 112 with a compliance date 3 years in the future) may be determined to be the most stringent applicable requirement if compliance with it would assure compliance with less stringent but currently applicable requirements. In such a case, the source may propose either a streamlined requirement based on immediate compliance with the future applicable requirement or it may opt for a phased approach where the permit would contain two separate time-sensitive requirements. Under the latter approach, one streamlined requirement addressing all currently applicable requirements would be defined to be effective until the future applicable requirement became effective. The permit would also contain a second streamlined requirement which also addressed the future applicable requirement and would become the new streamlined requirement after expiration of the first streamlined requirement.

applicable requirements. The EPA is planning to revise its part 70 regulations to provide that a source may certify compliance with only the proposed streamlined limit. Until this is accomplished, EPA recommends that a source certifying compliance only with the streamlined limit indicate this in an attachment to the certification, so that it is clear that the certification is being made with respect to a set of terms and conditions that the source believes "assure compliance" with all applicable requirements. In any event, a source may only certify compliance with a streamlined limit if there is source compliance data on which to base such a certification. (Such data should be available where the streamlined requirement is itself an applicable requirement and may be available if the streamlined limit is an alternative limit, e.g., a previously State-only emissions limitation). If there is not, then certifications must instead be made relative to each of the applicable requirements judged to be less stringent and must be based on data otherwise required under them to make this point clear.

Step Five - Develop a compliance schedule to implement any new monitoring/compliance approach relevant to the streamlined limit if the source is unable to comply with it upon permit issuance. The recordkeeping, monitoring, and reporting requirements of the applicable requirements being subsumed would continue to apply in the permit (as would the requirement for the source to operate in compliance with each of its emissions limits) until the new streamlined compliance approach becomes operative.

Step Six - Indicate in the application submittal that streamlining of the listed applicable requirements under a permit shield (where available) is being proposed and propose the establishment of a permit shield which would state that compliance with the streamlined limit assures compliance with the listed applicable requirements. All emission and/or performance standards not subsumed by the streamlined requirements must be separately addressed in the part 70 permit application.

Step Seven - Evaluate the adequacy of the proposal and its supporting documentation. The EPA recommends that the permitting authority communicate its findings to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences before issuance of a draft permit for public review. Where the permitting authority determines that the streamlining proposal is inadequate, the source, to retain its application shield, must expeditiously resolve any

problems identified by the permitting authority or update its prior application based on the individual applicable requirements previously proposed for streamlining.

Step Eight - Note the use of this process in any required transmittal of a part 70 application, application summary, or revised application to EPA and include the streamlining demonstration and supporting documentation in the public record. When the source is required to provide a copy of the application (or summary) directly to EPA, it must note the proposed use of streamlining. A copy of the streamlining demonstration must be submitted promptly to EPA along with the required copy of the application or application summary (where a summary may be submitted to EPA in lieu of the entire part 70 permit application) unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

4. Enforcement.

All terms and conditions of a part 70 permit are enforceable by EPA and citizens, unless certain terms are designated as being only State (or locally) enforceable. In addition, a source violating a streamlined emissions limitation in the part 70 permit may be subject to enforcement action for violation of one (or more) of the subsumed applicable emissions limits to the extent that a violation of the subsumed emissions limit(s) is documented.

Upon receiving a part 70 permit, a source implementing the streamlined approach would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are subsumed within the streamlined requirement and specified under the permit shield. These requirements would no longer be independently enforceable once the permit has been issued, provided that the source attempts in good faith to implement the monitoring, recordkeeping, and reporting requirements specified in the permit.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit will be reopened and revised.

5. Discussion.

As sources subject to title V identify all applicable requirements for inclusion in part 70 permit applications, they may find that multiple applicable requirements affect the same pollutant or performance parameter for a particular emissions

unit. Likewise, the requirements of federally-enforceable terms and conditions in preconstruction or operating permits may overlap with the requirements of other federally-enforceable rules and regulations.

In these instances, a source may be in compliance with the overall emissions limit of each of the applicable requirements, but be required to comply with a multitude of redundant or conflicting monitoring, reporting, or recordkeeping requirements. For example, a source owner faced with two emissions limits for the same pollutant at a specific emissions point may be required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emissions limits. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the implementing agency without an associated gain in compliance assurance. Prior to title V there has been no federally-enforceable means to resolve this situation.

The EPA encourages permitting authorities to allow use by the permit applicant of the part 70 permit issuance process to streamline multiple applicable requirements to the extent the conditions of this policy can be met. In this way, the part 70 process with its procedural safeguards can be used to focus all concerned parties on providing for compliance with a single set of permit terms that assure compliance with multiple applicable requirements instead of maintaining the costs of multiple sets of controls, monitoring, recordkeeping, and reporting approaches.

The legal basis for streamlining multiple applicable requirements relies on section 504(a), which requires that title V permits contain emissions limits/standards and other terms as needed to assure compliance with applicable requirements. This section notably does not require repetition of all terms and conditions of an applicable requirement when another applicable requirement or part 70 permit condition (i.e., streamlined requirement) could be fashioned to otherwise assure compliance with that applicable requirement.

Section 504(f) lends additional certainty to permit streamlining. It specifically provides that the permitting authority may authorize that compliance with the permit may be deemed to be compliance with the Act provided that the permit includes all applicable requirements. Thus, this section allows the permitting authority to issue a permit containing a shield which protects a source against a claim that it is violating any applicable requirements listed in the permit shield as being subsumed under the streamlined requirement, provided that the

source meets the permit terms and conditions that implement the streamlined requirement.

Part 70 is also receptive to the issuance of streamlined permits. It contains parallel language to the statute for emissions limits and for permit shields in §§ 70.6(a)(1) and (f). Although language in § 70.6(a)(3) may appear to restrict streamlining by requiring that all "applicable" monitoring, recordkeeping, and reporting requirements be placed in the permit, EPA did not intend for these provisions to preclude streamlining. Instead, the Agency believes that the provisions should be consistent with the flexibility for streamlining provided in section 504(a) of the Act and in § 70.6(a)(1). To require otherwise would be anomalous and could frustrate legitimate streamlining efforts. The EPA intends to revise part 70 to reflect this understanding in a future rulemaking.

Streamlining may be limited in cases where an applicable requirement defines specific monitoring requirements as the exclusive means of compliance with an applicable emissions limit. Some interpret these cases to require that only one set of monitoring requirements may be used to determine compliance and that only these requirements may appear in the part 70 permit. The EPA believes instead that section 504(a) supersedes any need for such exclusive monitoring, but nonetheless recommends that States address any potential concerns by adopting certain SIP language in the future. States that choose to revise their existing SIP's to contain authorizing language to overcome any SIP exclusivity problems may use the example language in Attachment B. The EPA believes that similar flexibility should be provided to non-part 70 sources as well. To that end, Attachment B also provides a SIP process (currently in draft form) which would allow similar flexibility for non-part 70 sources.

With respect to NSR, States can process, in parallel with the part 70 permit issuance process, a revision to an existing NSR permit as necessary to resolve any exclusivity concerns within existing NSR permits (See first White Paper).

Currently the implementing regulations for section 112(l) at 40 CFR part 63, subpart E represent an additional constraint on the streamlining of applicable requirements in part 70 permits but only where a State or local agency has accepted a delegation of authority for a particular maximum achievable control technology (MACT) standard by virtue of its commitment to replace the Federal section 112 emissions standard with the State's own standard or program during the part 70 permit issuance process and using the procedures established in the Subpart E rule at § 63.94.. In § 63.94, EPA has specified the criteria for

approving such alternative limits and controls to meet an otherwise applicable section 112 requirement. These criteria must be satisfied to ensure that, after a State accepts delegation under § 63.94, any change to the Federal rule results in permit requirements that, among other things:

- o Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

- o Require levels of emissions control for each affected source and emissions point no less stringent than those contained in the Federal standards or requirements;

- o Require compliance and enforcement measures for each affected source and emissions point no less stringent than those in the Federal standards or requirements;

- o Express levels of control and compliance and enforcement measures in the same form and units of measure as the Federal standard or requirement for § 63.94 program substitutions;

- o Assure compliance by each affected source no later than would be required by the Federal standard or requirement.

Thus, when a State or local agency, after receiving § 63.94 delegation, seeks to replace a Federal section 112 emissions standard with requirements arising from its own air toxics standard or program (such as a toxics NSR program) during the part 70 permit issuance process, streamlining must take place by meeting both the criteria of § 63.94 and, except where contradictory, the criteria of this guidance. However, because most States are planning to take straight delegation of Federal emissions standards through subpart E procedures that do not rely on the part 70 permit issuance process, the EPA believes that the subpart E criteria for streamlining applicable requirements will be necessary only in a minority of instances. In the majority of cases, where a State takes delegation of a Federal standard (e.g., through straight delegation), the applicable section 112 requirements could be streamlined by following only the criteria outlined in section A.2., above. Where there are a large number of sources in the same category subject to a MACT standard for which the State has a regulation with equivalent requirements, EPA recommends that the State explore delegation options under § 63.93 to best utilize available resources.

It should be noted that the current subpart E rule may be subject to change as a result of pending litigation. Currently, EPA intends to revise the rule within the parameters of the

Court's decision to allow greater flexibility for approving State air toxics standards and programs and to minimize or remove (as appropriate) any constraint that subpart E might impose on the streamlining of applicable requirements in part 70 permits.

Finally, States are strongly encouraged to adopt regulatory provisions allowing permitting authorities to grant the permit shield where they cannot now do so. The permit shield is an effective means to clarify that for applicable requirements listed as subsumed under the streamlined requirements, compliance with the streamlined requirements is deemed to also be compliance with the subsumed requirements. Such an understanding is essential to support and defend the issuance of any permit which provides for the streamlined treatment of multiple applicable requirements.

If a permit shield is not available, a permittee can still be afforded significant enforcement protection by an explicit agency finding that in its judgment the streamlined permit term indeed provides for full compliance with all the permit limits that is subsumes. In such a case, it is imperative that the permit contain language that lists the applicable requirements being subsumed into the streamlined requirement and states that compliance with the streamlined requirement will be deemed compliance with the listed requirements.

B. Development Of Applications And Permits For Outdated SIP Requirements.

1. Issue.

Can sources file part 70 permit applications on the basis of locally adopted rules pending EPA SIP approval rather than the current SIP requirements? Can sources certify their compliance status on the same basis? Under what circumstances can permitting authorities issue and/or later revise part 70 permits based on such locally adopted rules?

2. Guidance.

a. General. In the first White Paper (section II.B.6.), EPA described a mechanism for simplifying permits where a source is subject to both a State adopted rule that is pending SIP approval and the approved SIP version of that rule. Under that approach, the pending SIP requirements would be incorporated into the State-only portion of the permit and would become federally enforceable upon EPA approval of the SIP. The EPA believes that in most instances, the approach described in the first White Paper adequately addresses the described problem. In some areas (most notably California), however, a sizable backlog of pending

SIP revisions exists, and a more far-reaching solution is needed. In today's guidance, therefore, another approach that may be used by EPA and permitting authorities to address this situation is described.

Under this new alternative, the permitting authority may allow that application completeness initially be based on locally adopted rules including those which would relax current (i.e., federally-approved) SIP requirements, provided that (1) the local rule has been submitted to EPA as a SIP revision, and (2) the permitting authority reasonably believes that the local rule (not the current SIP rule) will be the basis for the part 70 permit.

Where the permitting authority or the source has demonstrated to EPA's satisfaction[17] that the local rule is more stringent and therefore assures compliance with the current SIP for all subject sources, a permit application relying on the local rule may be deemed to be complete and a permit containing the requirements of the local rule rather than the current SIP could be issued for part 70 purposes. That is, consistent with section 504(a) of the Act, the part 70 permit need only contain emissions limits and other terms and conditions (i.e., the more stringent local rule) as needed to assure compliance with the applicable requirement (i.e., the current SIP regulation).

An EPA finding that a submitted rule assures compliance with the approved SIP rule would be a preliminary indication of EPA's belief that a part 70 permit incorporating the terms of the submitted rule would also assure compliance with the approved SIP. Such a finding would not equate to rulemaking, and so would not constitute a revision of the SIP. Therefore, a preliminary finding would not necessarily ensure that the proposed revision would ultimately be approved by EPA, nor would it protect a source from enforcement of the approved SIP.[18] Further, such a finding would not predetermine the outcome of the part 70 permit proceeding. Reviewers would have the ability to evaluate any

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[17]Where resources allow and the situation calls for it, EPA will go on record with a letter to the permitting authority with a list of rules that it has preliminarily determined will assure compliance with the corresponding SIP approved rule.

[18]If a part 70 permit is issued based upon a pending SIP revision and a permit shield is incorporated in the permit, compliance with the permit would be deemed to be compliance with all applicable requirements. If EPA or the permitting authority later discovers that the permit terms do not assure compliance with all applicable requirements, including the applicable SIP, the permit would have to be reopened and revised.

proposed permit terms or conditions based on pending SIP revisions to determine whether the permit assures compliance with applicable requirements, i.e., the approved SIP. However, EPA believes that a finding of this nature should provide the source and the permitting authority sufficient assurance to proceed with the issuance of a permit that reflects the terms of the submitted local rule rather than the approved SIP. Note that a part 70 permit can be based on a local rule even if the local rule is subsequently disapproved by EPA for SIP purposes (e.g., measure is more stringent than the current SIP but fails to meet SIP requirements for reasonably available control technology and/or to make reasonable further progress), provided: (1) a permit based on the local rule would assure compliance with all applicable requirements (including the approved SIP); and (2) the permit meets all part 70 requirements.

Where the local rule submitted to EPA as a SIP revision represents a relaxation of the current SIP requirement (e.g., the local rule would replace an existing technology forcing rule that has been determined to be unachievable in practice), a part 70 source may propose in its permit application to base its permit on the local rule in anticipation of EPA approval. However, a permit based on the local rule could not be issued prior to EPA approval of the rule. This is because a permit based on the relaxed requirements of the local rule could not assure compliance with the more stringent applicable requirement (the approved SIP), as required by section 504 of the Act. Similarly, a part 70 source may be subject to pending SIP revisions that may tighten certain current SIP obligations and relax others for sources in that source category. Here again the permitting authority could allow initial application completeness to be determined relying on the locally adopted rule, but the permit could not be issued without the current SIP requirements unless a source opted to demonstrate that the submitted rule represents, for that specific source, a more stringent requirement than the current SIP. In such a case, the part 70 permit could subsequently be issued for that source on the basis of the local rule, since the permit terms would assure compliance with the approved SIP.

b. Initial actions by EPA and permitting authorities. The EPA is committed to working with States within available resources to assure that the timetable for overall permit issuance is not adversely affected by pending SIP revisions that are not straightforward tightenings. The extent of the problem, however, will vary greatly and, in some cases, may require a specific plan of action between EPA and certain States to expedite SIP processing where the problem is substantial.

In California, where this problem is believed to be most

extensive, EPA, the districts, and the California Air Resources Board are in the process of identifying rules in the SIP backlog that are not straightforward tightenings or are relaxations of the currently approved SIP, and will target them for expeditious processing. These rules will be identified within a specified timeframe, generally within 1 year of the effective date of a district's part 70 program. The EPA's Region IX will enter into formal agreements with affected districts and will commit to take action on this "targeted" portion of the SIP backlog before comprehensive permit issuance for sources affected by the backlog would be required, provided this is consistent with the transition plan[19] (as it may be revised). Other EPA Regional Offices will determine the need and resources available for this type of exercise on a case-by-case basis. Region IX will also commit to process expeditiously any similar rules submitted or identified after the period of the formal agreement, although such processing would not necessarily occur before permits must be issued to sources affected by these rules.

Under Region IX's formal agreements, permitting authorities in the districts need not issue the portion of the part 70 permit covering emissions units affected by the targeted backlog until the rule adoption or change identified in the formal agreement has been acted on by EPA, consistent with the flexibility allowed in the permit issuance transition plan in the permitting authority's program. This should in most cases allow permitting authorities to delay issuing permits to sources to the extent they are affected by the targeted SIP backlog until EPA completes its review action on the pending SIP revisions. Where a transition plan contains a permit issuance schedule that would not allow postponing permit issuance until EPA has acted on the proposed SIP revisions, appropriate changes to the plan can still be made to defer permit issuance until EPA action on the targeted SIP backlog. Such changes would be made following the same approach described for changing application forms in EPA's first White Paper. Within these constraints, a permitting authority may allow for issuance of part 70 permits to the facility in phases such that permits covering those emissions units of the facility affected by the targeted SIP revision are issued later. This result is also consistent with the flexibility contained in § 70.2 (see definition of "Part 70 permit") for the permitting authority to issue multiple permits to one part 70 source if it makes sense to do so. Alternatively, the permitting authority could issue the permit in its entirety based on the current SIP.

The EPA agrees that delays in permit issuance described

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[19]Transition plan refers to the 3-year transition strategy for initial part 70 permit issuance described in § 70.4(b)(11).

above will not be cause for an EPA finding of failure by the permitting authority to adequately administer or enforce its part 70 program. Any initial permit issued under a phased approach (i.e., the first phase involves all emissions units unaffected by the SIP backlog targeted by EPA), however, does not shield the source from the enforceability of the requirements excluded in the first phase permit and the obligation to obtain permit conditions covering the excluded emissions units after EPA has acted on the relevant SIP rule backlog.

c. Ongoing actions. The preceding guidance should address the most significant problems associated with the development of part 70 permit applications and the subsequent issuance of part 70 permits that result from the existence of a SIP backlog. The EPA recognizes, however, that areas experiencing the most significant start-up problems with respect to pending SIP rules may well require an ongoing program to manage the potential SIP backlog so as to prevent significant problems of this nature from occurring in the future. In some situations it may be appropriate on a continuing basis for EPA to determine preliminarily whether a submitted rule can be listed as one which would assure compliance with the SIP rule it seeks to replace. This would enable the permitting authority to adjust its priorities for requiring application updates and for accomplishing permit issuance and revision.

For post application submittal, a source that has filed a complete application may opt to, or be required to, update its current application as a result of changes or pending changes to the SIP. The likelihood of these changes occurring will vary from area to area, and are most likely to affect sources scheduled later in the transition period for initial permit issuance. For example:

- o A local rule previously relied upon may be amended by the State or district.

- o Where a local rule that was previously listed in the formal agreement for expeditious SIP processing (because the rule is not a straightforward strengthening) is disapproved by EPA and the source has relied on that rule in preparing its application, the applicant must file an application update that either demonstrates that compliance with the local rule would assure compliance with the current SIP or demonstrates direct compliance with the current SIP.

- o The adoption and submission to EPA of a more stringent local rule after an applicant has filed its application may present a new and desired opportunity for streamlining. If so, the applicant could opt to file an application update to

shift the compliance focus of its current application to the newly adopted local rule, which is pending SIP approval, provided it meets the streamlining criteria described in section II.A. above.

For post permit issuance, sources may also encounter changes to rule situations after initial permit issuance that could lead them to request a permit revision. For example, sources may propose a revision to an issued part 70 permit where a newly adopted local rule would present a desirable streamlining opportunity. The significant permit revision process would be required under the current part 70 to accomplish this change. Note that EPA in its revisions to part 70 may authorize permitting authorities to use a less extensive permit revision process.

To initiate the permit revision, the source must file an application to revise the permit to contain the requirements of local rule instead of the current SIP. This application must meet the previously defined and applicable streamlining criteria.

In response, the permitting authority may subsequently revise the permit based on the local rule in lieu of the current SIP where (1) the rule is listed by the EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or (2) the applicant has provided a source specific demonstration consistent with the streamlining criteria in section II.A.2. that assures this result. A permit shield or similar permit condition should be issued for purposes of certainty. In the absence of a shield or similar permit condition, all aspects of the approved SIP remain enforceable, regardless of the source's compliance status with respect to the permit. The EPA encourages permitting authorities currently without provisions for incorporating permit shields to add them at their first opportunity.

3. Process.

a. Initial Applications. An applicant proposing to submit its part 70 permit application based on a local rule that has been submitted for EPA approval rather than the current SIP would take one of two courses of actions depending on the status of the local rule with EPA and/or the permitting authority:

The first course of action would be appropriate for local rules that (1) have been previously demonstrated to EPA's satisfaction to be at least as stringent as the approved SIP rule so as to assure compliance with it for all subject sources, (2) are otherwise authorized by the permitting authority based on its judgement that such rules will likely be the basis for the

part 70 permit (e.g. EPA approval of the rule is imminent), or (3) have been specifically identified in a formal agreement between the permitting authority and EPA for expeditious SIP processing, i.e., the "targeted backlog." Rules listed in a formal agreement will typically involve local rules pending SIP approval which do or could represent full or partial relaxations of the current SIP. Where they choose to use this approach, the permitting authority and EPA will maintain an up-to-date list of local rules which meet any of these criteria.

In preparing initial part 70 permit applications with respect to such local rules the applicant:

Step One - Will indicate in its application that it has opted for this approach, list or cross-reference all requirements from applicable local rules that are eligible for this approach, and refer to the list maintained for this purpose by the permitting authority.

Step Two - Will identify in the permit application the current SIP requirements that the pending SIP revision would replace.

Step Three - May choose to certify compliance with the requirement(s) of the pending local rule in lieu of the current SIP if there is sufficient source compliance data on which to base such a certification. (The EPA is proposing to revise its part 70 regulations to provide that such a certification would meet the requirements of § 70.5(c)(10).)

Step Four - May propose that a permit shield would be in effect upon permit issuance. For those listed local rules which are recognized by EPA as being able to assure compliance with the current SIP rule, the applicant would indicate in the application that a permit shield (or alternatively, other similar language where authority for a permit shield is not available) is being proposed to be incorporated into the permit to confirm this understanding.

The second course of action would be appropriate where the criteria specified above have not been met for a particular rule and an applicant still wants to base its initial part 70 application on such local rules pending SIP approval. In this instance, the process would be essentially the same but the source would have to demonstrate that compliance with the local rule would assure compliance with the current SIP (i.e., make an adequate demonstration consistent with the streamlining criteria described in section II.A.2. above.) and submit it with the permit application in step one. Again, if a part 70 permit application has already been submitted without streamlining but

the source agrees to subsequently pursue this option, the permitting authority may work with the source to support streamlining requirements during the permit development process.

b. Initial Permit Issuance Process. After receiving a complete application, the permitting authority must note where the applicant has proposed use of the approaches described above in section II.B.3.a. The note would be placed in the application summary, the application, or the revised application. Copies of the application summary, the application, or the revised application containing such proposals must be submitted promptly to EPA (unless EPA has agreed that the demonstration is of a type not required for advance submittal to EPA).

Where the rule is listed by EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or the applicant has provided a source specific demonstration consistent with the streamlining outlined in section II.A.2., the permitting authority may proceed to issue the permit based on the local rule in lieu of the current SIP. A permit shield or similar permit condition which confirms this understanding should be issued for purposes of certainty.

If an applicant chooses to demonstrate that a local rule assures compliance with the applicable SIP for all affected emissions units, the permitting authority will evaluate this proposal and any supporting documentation. Upon completion of this evaluation and prior to releasing a draft permit public notice, the permitting authority is advised to communicate any concerns to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences. This may cause some revisions to the application as originally filed.

If the permitting authority or EPA are not satisfied that the local rule (as it applies to the applicant's facility) assures compliance with the applicable SIP rule, the applicant must revise its application to rely on the SIP rule. All required application updates must be submitted on or before the reasonable deadline required by the permitting authority for the source to maintain its application shield.

Consistent with the flexibility allowed in the permit issuance transition plan (as it may be revised), the permitting authority may delay issuance of those portions of a source's permit that are covered by a rule identified in a Region IX type formal agreement, which targets certain SIP rules for expeditious processing, until EPA has acted on the relevant rule(s). Alternatively, comprehensive permits may be issued to such a source prior to the time that EPA has acted on the rule provided

that they are based on the current SIP (unless the source has provided an adequate streamlining demonstration).

4. Enforcement.

All terms and conditions of the part 70 permit are enforceable by EPA and by citizens. In addition, a source violating the emissions limitation in the part 70 permit is also subject to enforcement action for violation of the current SIP emissions limits if a violation of this limit can be documented.

Upon issuance of a part 70 permit based on the local rule, the permit terms and conditions implementing the local rule would become federally enforceable. A source would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are required under the currently approved SIP, if such an understanding has been specified in the permit. These requirements would no longer be independently enforceable, provided the source attempts in good faith to implement the monitoring, recordkeeping, and reporting approach required under the local rule.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit must be reopened and revised.

5. Discussion.

Sources in California districts currently are subject to several locally adopted rules which are pending before EPA as proposed SIP revisions. The majority of these local rules have been determined by the districts to be more stringent than the SIP rules that they seek to replace, although some of these rules would relax the current SIP requirements for certain affected sources. In some cases, technology-forcing SIP rules have been found to be infeasible to achieve and, instead of seeking to enforce them, districts have adopted achievable local rules. Until the local rules are approved into the SIP, sources are subject to both the local rule and the federally-approved version of the rule.

The resulting "outdated SIP" presents special problems to sources which must file a part 70 permit application. In particular, questions arise as to whether sources must complete their applications and certify compliance based on SIP rules which have been superseded by more stringent local rules or by rules that have been relaxed where, for example, the permitting authority has found the current SIP rules to be unachievable. Those problems, while most apparent in their effect on the start-up of a part 70 program, are also ongoing in nature and may

create a need to update initially complete permit applications and to revise issued permits. The EPA believes that these problems with outdated SIP rules are most extensive in California but are not unique to that State.

The EPA strongly believes that implementation of title V to the extent possible should complement, not complicate, the implementation of other titles, including title I, the purpose of which is to assure adoption of programs that will attain and maintain the national ambient air quality standards (NAAQS).[20] Accordingly, the Agency is providing this guidance which will allow sources and permitting authorities to rely on more stringent local rules for permit issuance. The overall strategy for sensitizing the SIP revision process to part 70 concerns presented in this guidance will allow sources to focus more on current air quality requirements in all aspects of part 70 permit application development and update, permit issuance, and permit revision.

The legal basis for recognizing a local rule pending SIP approval in lieu of the current, but less stringent, SIP requirement or for streamlining multiple applicable requirements is identical to the basis for adopting a streamlined emissions limit to replace multiple applicable requirements (see discussion in section II.A.5.). The opportunities for shifting to the more stringent local rule are correspondingly affected by the limitations previously described for the streamlining of applicable requirements.

C. Treatment Of Insignificant Emissions Units.

1. Issue.

How must sources address insignificant emissions units (IEU's) subject to at least one applicable requirement?[21]

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[20]This guidance is designed primarily to alleviate situations where the SIP backlog is both large and longstanding. It is not to be used as a means of anticipating the outcome of pending attainment status redesignations.

[21]An emissions unit can be an IEU for one applicable requirement and not for another. However, such a unit may be eligible for treatment as an IEU only with respect to those pollutants not emitted in significant amounts. The term "significant" as used in this policy statement does <u>not</u> have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for

(Insignificant emissions units are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic or facility-wide requirements that apply to all emissions units.) Must the application and the subsequent permit address each IEU individually and require periodic monitoring where it is not otherwise provided by a generically applicable requirement? On what basis can the initial and future compliance certifications be made for IEU's with generally applicable requirements?

2. Guidance.

The EPA interprets part 70 to allow considerable discretion to the permitting authority in tailoring the amount and quality of information required in permit applications and permits as they relate to IEU's. In general, permit applications must contain sufficient information to support the drafting of the part 70 permit (including certain information for IEU's subject to only generally applicable requirements) and to determine compliance status with all applicable requirements. The EPA, however, interprets part 70 to allow permitting authorities considerable discretion as to the format and content of permits, provided that compliance with all applicable requirements, including those for IEU's, is assured. The Agency believes that the clarifications contained herein afford permitting authorities sufficient flexibility to treat IEU's in a manner commensurate with the environmental benefits that may be gained from their inclusion in the permit.

a. Permit Applications - Information. With regard to part 70 requirements to describe and list IEU's in applications and permits, the permitting authority can use the generic grouping approach for emissions units and activities as discussed in the first White Paper. In addition, the requirement to identify all applicable requirements, as it related to IEU's subject to generally applicable requirements, can normally be addressed by standard or generic permit conditions with minimal or no reference to any specific emissions unit or activity. The EPA has reviewed and acquiesced in the issuance of permits wherein generally applicable requirements are incorporated through the use of tables describing a tiered compliance regime for these requirements as they affect different sizes of emissions units, including a distinct and more streamlined compliance regime for IEU's. Different generic permit tables may be necessary to cover the situation for a particular type of IEU which is governed by different applicable requirements. Similarly, the first White Paper provides that no emissions

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treatment in the application as an insignificant emissions unit.

estimates need be provided for even regulated emissions streams where it would serve no useful purpose to do so. This should be the case for IEU's where the amount of emissions from a unit is not relevant to determining applicability of, or compliance with, the requirement. Except where the contributions of IEU's would need to be more precisely known to resolve issues of applicability or major source status would the permitting authority need to request emissions estimates for part 70 purposes.

b. Permit Applications - Initial Compliance Certifications. Section 70.5(c)(9) requires complete part 70 applications to contain a certification of compliance with all applicable requirements by a responsible official and a statement of the methods used for determining compliance. This certification must be based on a "reasonable inquiry" by the responsible official. The EPA believes that, for the generally applicable or facility-wide requirements applying to an IEU, reasonable inquiry for initial certifications need only be based on available information, which would include any information required to be generated by the applicable requirement. Regarding the latter, and as is true for any applicable requirement, the initial certification can be based on only the latest cycle of required information (e.g., a source could generally rely on a demonstration of compliance resulting from the most recent required monitoring, notwithstanding the existence of prior monitoring indicating non-compliance at a previous point in time). Where an applicable requirement (generally applicable or otherwise) does not require monitoring, the § 70.5(c)(9) requirement to certify compliance does not itself require that monitoring be done to support a certification. Similarly, there is no need to perform an emissions test to support this compliance certification if none is required by the applicable requirement itself. The EPA interprets § 70.5(c)(9) to allow for a certification of compliance where there is no required monitoring and, despite a "reasonable inquiry" to uncover other existing information, the responsible official has no information to the contrary.

c. Permit Content - Applicable Requirements. With regard to part 70 obligations to include all applicable requirements in the permit, the permitting authority can also use the generic grouping approach for emissions units and activities as discussed in the first White Paper. That is, generally applicable requirements can normally be adequately addressed in the part 70 permit by standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. As noted above, different generic permit provisions may be necessary to cover the situation for which different types of

IEU's are governed by different applicable requirements.

d. Permit Content - Monitoring, Recordkeeping, and Reporting. Section 70.6(a)(3)(i) requires all applicable requirements for monitoring and analysis procedures or test methods to be contained in part 70 permits. In addition, where the applicable requirement does not require periodic testing or monitoring (which may consist of recordkeeping designed to serve as monitoring), the permitting authority must prescribe periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Many of the generically applicable requirements for IEU's have a related test method, but relatively few have a specific regimen of required periodic testing or monitoring.

The EPA believes that the permitting authority in general has broad discretion in determining the nature of any required periodic monitoring. The need for this discretion is particularly evident in the case of generally applicable requirements, which tend to cover IEU's as well as significant emissions units. The requirement to include in a permit testing, monitoring, recordkeeping, reporting, and compliance certification sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emissions units and applicable requirement situations. It does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. In particular, where the establishment of a regular program of monitoring would not significantly enhance the ability of the permit to assure compliance with the applicable requirement, the permitting authority can provide that the status quo (i.e., no monitoring) will meet § 70.6(a)(3)(i). For IEU's subject to a generally applicable requirement for which the permitting authority believes monitoring is needed, a streamlined approach to periodic monitoring, such as an inspection program to assure the proper operation and maintenance of emissions activities (e.g., valves and flanges), should presumptively be appropriate.

The EPA's policy on IEU monitoring needs is based on its belief that IEU's typically are associated with inconsequential environmental impacts and present little potential for violations of generically applicable requirements, and so may be good candidates for a very streamlined approach to periodic monitoring. As EPA noted in the first White Paper, generally applicable requirements typically reside in the SIP. Permitting authorities therefore not only have the best sense of which requirements qualify as generally applicable, but also where it is appropriate to conclude that periodic monitoring is not

necessary for IEU's subject to these requirements. Where the source ascertains that the permitting authority will not require periodic monitoring for IEU's, it can of course omit a periodic monitoring proposal from the application.

e. Permit Content - Compliance Certifications. Section 70.6(c)(5) requires in part that each permitted source submit no less frequently than annually a certification of its compliance status with all the terms and conditions of the permit. This certification will be based on available information, including monitoring and/or other compliance terms required in the permit. Where a particular emissions unit presents little or no potential for violation of a certain applicable requirement, the "reasonable inquiry" required by title V can be abbreviated. Since it can be determined in the abstract that violation of the requirement by these emissions units is highly improbable, it is reasonable in that instance to limit the search for information to what is readily available. As noted above, EPA believes that an IEU subject to a generally applicable requirement typically presents little or no potential for violation of those requirements. It follows that where, for instance, a permit does not require monitoring for IEU's subject to a generally applicable requirement, and there were no observed, documented, or known instances of non-compliance, an annual certification of compliance is presumptively appropriate. Similarly, where monitoring is required, an annual certification of compliance is also appropriate when no violations are monitored and there were no observed, documented, or known instances of non-compliance.

3. Discussion.

Many of the concerns expressed to EPA regarding the treatment of IEU's in the application and permit arise because IEU's are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic requirements that apply to all emissions units. Though the focus of concern is the applicability of the generic requirements to IEU's, response to these concerns derive primarily from the flexibility that exists in part 70 for dealing with generically applicable requirements. In implementing this flexibility, it may be appropriate for the permitting authority to further distinguish between units that have been designated as insignificant and those that have not. This is so because the relative size of a unit can be an important factor in deciding how to fashion permit terms even for a generically applicable requirement, and State-established IEU's normally define the smallest emissions points. However, EPA notes that, as a matter of part 70 interpretation, whether a unit has been designated as insignificant is not necessarily critical to its treatment in the part 70 permit.

Concerns have been expressed that addressing in part 70 permits the relatively trivial portion of emissions attributable to IEU's will consume a disproportionate share of the total resources available to issue part 70 permits. That is, according to their understanding of part 70, applicants and permitting authorities will expend greater resources than warranted to determine the specific applicability of requirements to IEU's, how compliance with them will be assured, and the basis on which the certification of compliance status of the source with respect to these IEU's would be made.

The EPA believes that the policy described for addressing generically applicable requirements in applications and permits as they apply to IEU's allows permitting authorities sufficient flexibility to streamline the required administrative effort commensurate to the environmental significance of the varying types of IEU situations. This should prevent the potentially high but unintended level of costs identified by certain sources and permitting authorities from occurring in the future with respect to IEU's.

D. Use Of Major Source And Applicable Requirement Stipulation.

1. Issue.

When an applicant stipulates that it is a major source and subject to specific applicable requirements, how much, if any, additional information related to applicability is necessary in the part 70 permit application?

2. Guidance.

If an applicant stipulates that it is a major source[22] and subject to specific applicable requirements, it need not provide additional information in its application to demonstrate applicability with respect to those requirements, provided that (1) the permitting authority has had previous review experience with a particular source (e.g., issued it a permit), or (2) otherwise has an adequate level of familiarity with the source's operation (e.g., current emissions inventory information). This does not affect the requirement to provide information for other purposes under part 70, such as to support a compliance certification or a request for a permit shield or to describe the emissions activities of its site (see first White Paper).

Accordingly, permitting authorities may allow the applicant

[22]If an applicant stipulates it is a major source, it must list all pollutants for which it is major.

to stipulate that:

- o Its facility is a major source and subject to part 70 permitting, without providing any additional information for the applicability determination;

- o It is subject to specific applicable requirements, to be included in its part 70 permit, without providing additional information to establish applicability for stipulated requirements; or

- o It is subject to only portions of an applicable requirement and state that it is not subject to other portions. Such a stipulation must explicitly state which portion of the rule applies and which does not and an explanation must be provided for this conclusion.

Stipulation by a source to major source status or specific applicable requirements in a part 70 application does not preclude the permitting authority from requesting additional information from the applicant for establishing the applicability of non-stipulated requirements or for verifying a stipulation that certain requirements are not applicable.

3. Discussion.

In general, part 70 requires that applications contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit.

In the first White Paper, EPA indicated a substantial degree of discretion for permitting authorities in this area. It indicates that States may adopt different approaches to meet the minimum program requirements established by the part 70 regulations depending on local needs. In many instances, a qualitative description of emissions will satisfy this standard. However, the applicant may need to provide more detailed information for purposes other than determining applicability and to foster efficiency in the permitting program.

For the purpose of determining the applicability of part 70 or other specific requirements, the information required in an application should be streamlined for the mutual benefit of the applicant and the permitting authority. An applicant that stipulates it is a major source subject to part 70 and to other applicable requirements should not be required to provide any additional information to verify those facts in its part 70

application. However, the applicant must provide sufficient information to allow the permitting authority to impose the applicable requirement. In addition, the resulting application streamlining would not relieve the applicant from submitting, or the permitting authority from reviewing, emissions or other data for part 70 purposes other than determining applicability.

In the case where there is no dispute that a stationary source is subject to part 70, and the applicant stipulates that the source is a part 70 source in the application, no further information would be required for applicability determination. An example would be a source which is currently operating under a prevention of significant deterioration permit because it is major for PM-10. Both the source and the permitting authority agree that the source is subject to the State's part 70 program.

A source may also streamline the part 70 permit process by stipulating that specific applicable requirements apply. This does not relieve the source of its obligation to identify all applicable requirements or preclude the permitting authority from requesting additional information, including information pertaining to the applicability of requirements not covered in the stipulation. For example, a stationary source may stipulate it is subject to a SIP rule. However, the permitting authority may suspect that the source is also subject to a New Source Performance Standard (NSPS), but may need more information for confirmation. In this case, the permitting authority would request additional information related to the applicability of the NSPS.

Similarly, an applicant may stipulate that it is subject to only portions of an applicable requirement and state that it is not subject to other portions. In such case, the permitting authority may request the applicant to provide additional information to demonstrate that it is not subject to requirements in question. However, if a source requests a permit shield, additional information to demonstrate the non-applicability of these requirements must be submitted.

E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

1. Issue.

Can an applicant in its permit application, and can the permit itself, reference existing information that is available at the permitting authority? Also, can the permit application and the permit reference applicable requirements through citation rather than by a complete reprinting of the requirements themselves in the part 70 permit application or permit?

2. Guidance.

a. General. Information that would be cited or cross referenced in the permit application and incorporated by reference into the issued permit must first be currently applicable and available to the permitting authority and public[23]. The information need not be restated in the part 70 application. Standardized citation formats should be established by the permitting authority to facilitate appropriate use of this mechanism.

Referenced documents must also be specifically identified. Descriptive information such as the title or number of the document and the date of the document must be included so that there is no ambiguity as to which version of which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.

b. Permit Applications. The applicant and the permitting authority should work together to determine the extent to which part 70 permit applications may cross reference agency-issued rules, regulations, permits, and published protocols, and existing information generated by the applicant. To facilitate referencing existing information, permitting authorities should identify the general types of information available for this purpose. To the extent that such information exists and is readily available to the public, the following types of information may be cited or cross referenced (as allowed by the permitting authority)[24]:

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[23]Referenced documents must be made available (1) as part of the public docket on the permit action or (2) as information available in publicly accessible files located at the permitting authority, unless they are published or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent).

[24]Use of cross-referencing does not shift any burden of reproducing or otherwise acquiring information to the permitting authority.

o Rules, regulations, and published protocols.

o Criteria pollutant and HAP emission inventories and supporting calculations.

o Emission monitoring reports, compliance reports, and source tests.

o Annual emissions statements.

o Process and abatement equipment lists and descriptions.

o Current operating and preconstruction permit terms.

o Permit application materials previously submitted.

o Other materials with the approval of the permitting authority.

Applicants are obligated to correct and supplement inaccurate or incomplete permitting authority records relied upon for the purposes of part 70 permit applications. The responsible official must certify, consistent with § 70.5(d), to the truth, accuracy, and completeness of all information referenced.

c. Permits. Incorporation by reference in permits may be appropriate and useful under several circumstances. Appropriate use of incorporation by reference in permits includes referencing of test method procedures, inspection and maintenance plans, and calculation methods for determining compliance. One of the key objectives Congress hoped to achieve in creating title V, however, was the issuance of comprehensive permits that clarify how sources must comply with applicable requirements. Permitting authorities should therefore balance the streamlining benefits achieved through use of incorporation by reference with the need to issue comprehensive, unambiguous permits useful to all affected parties, including those engaged in field inspections.

Permitting authorities may, after listing all applicable emissions limits for all applicable emissions units in the part 70 permit, provide for referencing the details of those limits, rather than reprinting them in permits to the extent that (1) applicability issues and compliance obligations are clear, and (2) the permit includes any additional terms and conditions sufficient to assure compliance with all applicable requirements[25].

[25]In the case of a merged permit program, i.e., where a State has merged its NSR and operating permits programs, previous

Where the cited applicable requirement provides for different and independent compliance options (e.g., boilers subject to an NSPS promulgated under section 111 may comply by use of low sulfur fuel or through add-on of a control device), the permitting authority generally should require that the part 70 permit contain (or incorporate by reference) the specific option(s) selected by the source. Alternatively, the permit could incorporate by reference the entire applicable requirement provided that (1) such reference is unambiguous in its applicability and requirements, (2) the permit contains obligations to certify compliance and report compliance monitoring data reflecting the chosen control approach, and (3) the permitting authority determines that the relevant purposes of title V would be met through such referencing. The alternative approach would not be allowable if changing from one compliance option to another would trigger the need for a prior review by the permitting authority or EPA (e.g. NSR), unless prior approval is incorporated into the part 70 permit (i.e., advance NSR).

The EPA does not recommend that permitting authorities incorporate into part 70 permits certain other types of information such as the part 70 permit application (see first White Paper).

3. Discussion.

Title V and part 70 do not define when citation or cross-referencing in permit applications would be appropriate, although it obviously would not be allowed where such citations or cross-references would not support subsequent development of the part 70 permit. The EPA's first White Paper states that a permitting authority may streamline part 70 applications by allowing the applicant to cross-reference a variety of documents including permits and Federal, State, and local rules. This guidance further provides that where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory) the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Permitting authorities' files and databases often include information submitted by the applicant which can also be required by part 70. Development and review of part 70 permit applications could be streamlined if information already held by

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NSR permits expire. This leaves the part 70 permit as the sole repository of the relevant prior terms and conditions of the NSR permit. Under these circumstances, it is not possible to incorporate by reference the expired NSR permits.

the permitting authority and the public is referenced or cited in part 70 permit applications rather than restated in its entirety. Similarly, specific citations to regulations that are unambiguous in their applicability and requirements as they apply to a particular source will reduce the burden associated with application development.

Incorporation by reference can be similarly effective in streamlining the content of part 70 permits. The potential benefits of permit development based on an incorporation by reference approach include reduced cost and administrative complexity, and continued compliance flexibility as enforceably allowed by the underlying applicable requirements.

Expectations for referencing with respect to permit content are somewhat better defined than for permit applications. Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements." In addition, section 504(c) requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." Analogous provisions are contained in §§ 70.6(a)(1) and (3). The EPA interprets these provisions to place limits on the type of information that may be referenced in permits. Although this material may be incorporated into the permit by reference, that may only be done to the extent that its manner of application is clear.

Accordingly, after all applicable emissions limits are placed in the part 70 permit and attached to the emissions unit to which they apply, the permitting authority may allow referencing where it is specific enough to define how the applicable requirement applies and where using this approach assures compliance with all applicable requirements. This approach is a desirable option where the referenced material is unambiguous in how it applies to the permitted facility, and it provides for enforceability from a practical standpoint. On the other hand, it is generally not acceptable to use a combination of referencing certain provisions of an applicable requirement while paraphrasing other provisions of that same applicable requirement. Such a practice, particularly if coupled with a permit shield, could create dual requirements and potential confusion.

Even where the referenced requirement allows for compliance options, the permitting authority may issue the permit with incorporation of the applicable requirement provided that the compliance options of the source are enforceably defined under available control options, appropriate records are kept and

reports made, and any required revisions to update the permit with respect to specific performance levels are made. This treatment would be analogous to the flexibility provided to sources through the use of alternative scenarios.

Attachment A

Approval of Alternative Test Methods

The part 63 general provisions, as well as other EPA air regulations implementing sections 111 and 112 of the Act, allow only EPA-approved test methods to implement emissions standards that are established by States to meet Federal requirements. Accordingly, streamlining cannot result in any requirement relying on a State-only test method unless and until EPA, or the permitting authority acting as EPA's delegated agency, approves it as an appropriate method for purposes of complying with that streamlined standard. Currently, all States may be delegated authority to make decisions regarding minor revisions to EPA approved test methods (i.e., minor changes are those that have isolated consequences, affect a single source, and do not affect the stringency of the emissions limitation or standard). The EPA is exploring options for defining where delegation to States is appropriate for reviewing major revisions or new test methods, and for expediting the approval process where the Agency retains final sign-off authority. The EPA recognizes that its approval must generally occur in a timeframe consistent with the time constraints of the part 70 permit issuance process. Until further guidance on this subject is issued, States must obtain EPA approval for all State-only test methods which represent major changes or alternatives to EPA-approved test methods prior to or within the 45-day EPA review period of the proposed permit seeking to streamline requirements.

With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. For example, some SIP's expressly connect a test method with a particular emissions limit but allow for the use of an equally stringent method. Other SIP's contain a more exclusive linkage between an emissions limit and its required test method (i.e., limit A as measured by test method B). The SIP-approved test method can be changed only through a SIP revision unless the SIP contains provisions for establishing alternative test methods. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for a source-specific SIP revision.

Permitting authorities may implement streamlining which involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority granted by EPA (where section 111/112 standards are involved). Permit applications containing a request for a streamlined requirement based on an alternative or new test method must, to be complete,

demonstrate that the alternative or new test method would determine compliance at the same or higher stringency as the otherwise applicable method. The EPA expects to receive expeditiously (i.e., well in advance of any draft permit issuance) those portions of an application dealing with a proposal for streamlining, including any demonstration of test method adequacy. Any required EPA approval of an alternative or new test method need not be obtained as a precondition for filing a complete application, but it must be secured before the final part 70 permit can be issued. As mentioned previously, EPA intends to structure its approval process to comport reasonably with the timelines for part 70 permit issuance.

Attachment B

SIP Provisions For Establishing Alternative Requirements

I. Overview.

States may revise their SIP's to provide for establishing equally stringent alternatives to specific requirements set forth in the SIP without the need for additional source-specific SIP revisions. To allow alternatives to the otherwise-applicable SIP requirements (i.e., emissions limitations, test methods, monitoring, and recordkeeping) the State would include language in SIP's to provide substantive criteria governing the State's exercise of the alternative requirement authority.

II. Example Language For Part 70 Sources To Establish Alternative SIP Requirements.

The following is an example of enabling language that could be used to provide flexibility in the SIP for allowing alternative requirements to be established for part 70 sources.

> In lieu of the requirements imposed pursuant to (reference specific applicable sections(s) or range of sections to be covered), a facility owner may comply with alternative requirements, **provided** the requirements are established pursuant to the part 70 permit issuance, renewal, or significant permit revision process and are consistent with the streamlining procedures and guidelines set forth in section II.A. of White Paper Number 2.
>
> For sources subject to an approved part 70 program, an alternative requirement is approved for the source by EPA if it is incorporated in an issued part 70 permit to which EPA has not objected. Where the public comment period precedes the EPA review period, any public comments concerning the alternative shall be transmitted to EPA with the proposed permit. If the EPA and public comment periods run concurrently, public comments shall be transmitted to EPA no later than 5 working days after the end of the public comment period. The Director's [permitting authority's] determination of approval is not binding on EPA.
>
> Noncompliance with any provision established by this rule constitutes a violation of this rule.

III. Example Language For Non-Part 70 Sources To Establish Alternative SIP Requirements.

[NOTE: This section is a draft that EPA expects to finalize after appropriate revisions in the near future.]

For sources not subject to an approved part 70 program, the following is an example of enabling language that States may use to revise/submit SIP rules which would provide flexibility in the SIP for allowing alternative requirements to be established.

A. Procedures.

1. General. In lieu of the requirements imposed pursuant to [reference applicable sections] of this plan, a source owner may comply with an alternative requirement, provided that the Director approves it consistent with the procedures of this paragraph and the criteria of paragraph B.

2. State Review Procedure. The Director may establish an alternative requirement in [a review process defined by the State], provided that the requirements of this paragraph are met for EPA and public review and for notification and access are met. The Director's determination of approval is not binding on EPA.

3. Public Review. The Director shall subject any proposed alternative to adequate public review but may vary the procedures for, and the timing of, public review in light of the environmental significance of the action. For the following types of changes [add list of de minimis actions subject to EPA review], no public review shall be necessary for the approval of the alternative.

4. EPA Review. The Director shall submit any proposed alternative to the Administrator through the appropriate Regional Office, except for the following types of changes [add list of de minimis actions subject to EPA review] no EPA review shall be necessary for the approval of the alternative. Until the specific alternative SIP requirement has completed EPA review, the otherwise applicable SIP provisions will continue to apply.

5. Periodic Notification And Public Access. For all actions taken by the State to establish an alternative requirement, the Director shall provide in a general manner for periodic notification to the public on at least a quarterly basis and for public access to the records regarding established alternatives and relevant supporting documentation.

6. Enforcement. Noncompliance with any alternative established by this provision constitutes a violation of this rule. The EPA and the public may challenge such an alternative limit on the basis that it does not meet the criteria contained in the SIP for establishing such an

alternative. In addition, EPA and the public can take enforcement action against a source that fails to comply with an applicable alternative requirement.

B. General Criteria for Evaluating Alternatives.

1. Applicability. The unit(s) to which the requirements apply must be specified in the underlying SIP and in the permit/alternative. If percentage reductions are required from the source, the baseline must be clearly set. The SIP must require the submission of all the information necessary to establish the baseline, and the alternative requirement must achieve the reduction called for in the SIP.

2. Time. The alternative must specify the effective date of the alternative requirement. The underlying requirement of the SIP shall remain in effect until the effective date of the alternative. The alternative must clearly specify any future-effective dates or any compliance schedules that apply to the source under regulations in effect at the time of issuance. For instance, a source may be due to comply with requirements promulgated before the permit/alternative was issued, but which are effective prior to the expiration of the permit/alternative.

3. Effect of changed conditions. If alternative emissions limitations or other requirements are allowed in the underlying SIP, the associated documentation with the changed conditions must clearly demonstrate the alternative requirement is no less stringent than the original SIP requirement.

4. Standard of conduct. The alternative proposal must clearly state what requirements the source must meet. For example, the SIP must specify the emissions limit and what alternatives are acceptable. The alternative proposal must contain limits, averaging times, test methods, etc., that are no less stringent and must address how they are no less stringent than the underlying SIP requirements. The alternative proposal must also show whether it applies on a per-source or per-line basis or is facility-wide.

5. Transfer Efficiency. Any SIP allowing alternative emissions limits and using transfer efficiency in determining compliance must explicitly state the circumstances under which a source may use improved transfer efficiency as a substitute for meeting the SIP limit. The improvement should be demonstrated through testing and an

appropriate baseline and test method should be specified.[1] See draft "Guidelines for determining capture efficiencies" for criteria for evaluating alternative capture efficiency requirements.

6. Averaging Time. Both the SIP and the alternative proposal must explicitly contain the averaging time associated with each emissions limit (e.g., instantaneous, three hour average, daily, monthly, or longer). The time must be sufficient to protect the applicable NAAQS. The alternative proposal must demonstrate that the averaging time and the emissions limit in the alternative are as stringent as those in the original SIP requirements.

7. Monitoring and Recordkeeping. The alternative proposal must state how the source will monitor compliance with the emissions requirement, and detail how the proposed method compares in accuracy, precision, and timeliness to the SIP-approved method. Records and monitoring data must be retained for at least the same period of time as required by the SIP. The method must enable compliance determinations consistent with the averaging time of the emissions standard.

8. Test Methods. The alternative proposal must detail how the proposed test method in association with its particular emissions requirement (or rule) is at least as stringent as the approved method in association with its emissions limit (or rule) considering the accuracy, reliability, reproducibility, and timeliness of each test method taken in combination with its emissions limit. The application or proposal must also address how the change affects measurement sensitivity and representativeness, describe the need for the change, and indicate if the change is needed for unique conditions related only to the source in question. The method must enable a compliance determination consistent with the averaging time of the emissions standard associated with it.

9. Act Requirements. The alternative must meet the all applicable Act requirements (e.g., for reasonably available control technology, 15% VOC reduction, etc.) and must not interfere with any requirements of the Act, including any regarding the SIP's attainment demonstration and requirements for reasonable further progress.

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[1]Implied improvements noted by the NSPS auto coating transfer efficiency table cannot be accepted at face value.

10. Production Level. The emissions are no greater than the SIP allowable emissions at the same production level. Pre-1990 production/operation scenarios cannot be used as part of any demonstration that the alternative requirements are as stringent as those in the SIP. Also, the demonstration must be performed using an EPA-approved test methods.